



# Middle East Review

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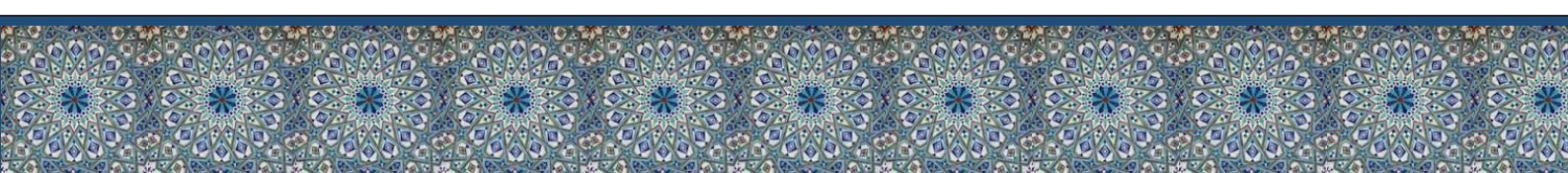
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## About the Middle East Committee

The Middle East Committee is part of the American Bar Association's Section of International Law. Members of the committee have a professional or personal interest in law and events concerning the Middle East. The geographic scope of the committee encompasses North Africa, the Gulf Cooperation Council (GCC), Afghanistan, Iran, Iraq, Israel, Jordan, Lebanon, Pakistan, Palestine, Sudan, Syria, Turkey, and Yemen. The Committee conducts regular substantive conference calls for members, maintains an active email list, and organizes panels for Section events. It has also helped organize and support various Rule of Law/judicial reform initiatives, including for Afghanistan, Iraq, Morocco, and Tunisia. Recent teleconferences have addressed the refugee crisis and responsibility to protect in Syria, political and security developments in Egypt and Libya, application of US employment law in the Middle East, and US and international sanctions, among other issues. To learn more, visit the [Committee's website](#).

All views and opinions expressed in the Middle East Review are those of the authors and do not necessarily reflect the opinions, policies or positions of the American Bar Association or any of its constituent entities, including the Middle East Committee.

## 2017-2018 MIDDLE EAST COMMITTEE LEADERSHIP

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## UPCOMING COMMITTEE AND SECTION EVENTS

**May 10, 2018, 6:30 – 8:00 PM Eastern: Middle East Committee Meet Up- Elections and Government Accountability in the Middle East- Realities and Challenges**, Lewis Baach Kaufmann Middlemiss PLLC, 1899 Pennsylvania Ave. NW, Suite 600, Washington, DC (Teleconference Option Available) Kindly RSVP to Mr. Issa Al-Aweel at [issashukri@gmail.com](mailto:issashukri@gmail.com)

**May 10-11, 2018: 2018 Investment Arbitration and Trans-Pacific Transactions Conference**, Maxwell Chambers, Singapore (In-person event)  
<https://shop.americanbar.org/ebus/ABAEventsCalendar/EventDetails.aspx?productId=296454598>

**May 21-22, 2018: Challenging the Perception of Risk in Africa**, Radisson Blu Hotel & Residence, Cape Town, South Africa (In-person event)  
<https://shop.americanbar.org/ebus/ABAEventsCalendar/EventDetails.aspx?productId=306779013>

**June 7-10, 2018: ABA 2018 Paris Sessions, Celebrating the 70<sup>th</sup> Anniversary of the Adoption of the Universal Declaration of Human Rights**, InterContinental Paris Le Grand Hotel, Paris, France  
[https://www.americanbar.org/groups/departments\\_offices/meetings\\_travel\\_dept/aba-2018-paris-sessions.html](https://www.americanbar.org/groups/departments_offices/meetings_travel_dept/aba-2018-paris-sessions.html)

**June 10, 2018: Section of International Law Life Sciences Conference**, Scandic, Copenhagen, Denmark (In-person event)  
<https://shop.americanbar.org/ebus/ABAEventsCalendar/EventDetails.aspx?productId=296568287>

**August 2-7, 2018: ABA Annual Meeting**, Chicago, Illinois  
<https://www.americanbar.org/portals/2018-annual-meeting.html>

**September 27, 2018: 10<sup>th</sup> Annual Moscow Conference on the Resolution of International Business Disputes**, Moscow, Russia

**October 17-19, 2018: The New Engine of Growth! Investment and Technology Conference**, Korea University, Seoul, South Korea

**November 7-9, 2018: International Trade and Investment Conference**, Presidente InterContinental Hotel, Mexico City, Mexico)

**November 30, 2018: Capital Markets in the 21<sup>st</sup> Century**, London, United Kingdom

**January 23-29, 2019: ABA Midyear Meeting**, Las Vegas, Nevada

**April 9-12, 2019: Section of International Law 2019 Annual Conference, Other Voices in Private and Public International Law**, Capital Hilton Hotel, Washington, DC

**June 30-2 July 2, 2019: Leadership in Law & Practice Conference**, Oxford University, United Kingdom

## Middle East Committee Holds its First Meetup for the 2017-2018 Program Year: Washington, D.C.

Issa Aweel

The Middle East Committee (MEC), on November 16, 2017, held an informal gathering in Washington, DC, for committee members and members of other committees in the Section of International Law. Lewis Baach Kaufmann Middlemiss, PLLC, generously hosted the event. Of note, Committee member and New York attorney Gregg Brelsford made an engaging presentation on rule of law, titled “21st Century Middle East and Global Rule of Law Under Siege: A Proposed ABA Virtual Grassroots Intervention.”



Gregg’s presentation addressed the current distressed state of the rule of law across the globe, and proposed a virtual, grassroots strategy to help reverse adverse trends. He proposed opening ABA membership, and participation in its 780 committees, to legal professionals in the Middle East and other developing countries through complimentary ABA membership. After the presentation, Gregg led a discussion about the rule of law, particularly in Middle Eastern countries. Several MEC members and prospective members attended the gathering, and shared comments about the proposal as well as its potential benefits for the rule of law in the Middle East. The discussion included such points as the ABA’s role in an initiative to engage non-

American bar associations and attorneys, the benefits of such initiatives, and potential obstacles.

Through such events, the MEC aims to bring together members from various committees in the Section of International Law to exchange experiences and ideas, and to take part in effecting stability across the Middle East and the globe.

The next meet-up is scheduled to take place on May 10, 2018 in Washington, DC. The topic will be “Elections and Government



Accountability in the Middle East - Realities and Challenges.” Please RSVP to Mr. Issa Al-Aweel at [issashukri@gmail.com](mailto:issashukri@gmail.com). Issa is a Maryland attorney practicing as a public defender. He also conducts research on Middle Eastern affairs.

## Tailor-Made Jurisdictions: Arbitration in the DIFC

William Diab

The rapid globalization of the financial market in the past few decades and the relative domination of that market by Western nations has led many of the world's developing nations to create financial free zones within their jurisdictions in order to attract foreign investments. Accordingly, in July 2004 the United Arab Emirates (UAE) passed Federal Law No. 8<sup>1</sup> authorizing the seven Emirates to establish their own financial free zones. Dubai seized this opportunity to further cement itself as the financial oasis of the Arabian Peninsula – a city with an international character and a bastion of international commerce. Dubai enacted Law No. 9, which created the now increasingly popular Dubai International Financial Centre (“DIFC”) as an area of special legal status in downtown Dubai.<sup>2</sup>

### The DIFC

Dubai set out to create a global, cosmopolitan business campus where global investors and issuers of capital can feel comfortable. The DIFC draws in investors with attractive incentives such as complete (100%) foreign ownership, zero corporate taxes or income taxes for a guaranteed period of time (i.e., a tax “holiday”), no foreign exchange controls,

and a special regulatory framework.<sup>3</sup> Furthermore, entities incorporated and registered in the DIFC are exempt from the application of the civil or commercial laws of the UAE.<sup>4</sup>

Since its independence, the UAE's legal system has traditionally reflected a marriage between the Shari'a and civil law systems. Dubai Law No. 9 provides that the DIFC has three constituent bodies: (i) the DIFC Authority, a legislative body; (ii) the Dubai Financial Services Authority, a regulatory body; and (iii) the Judicial Authority. The DIFC was designed as a common law jurisdiction with the authority to enact its own statutes as well.<sup>5</sup> Thus far, it has enacted a considerable body of statutory law concerning contracts, corporations, partnerships, securities, employment, insolvency, remedies, obligations, etc., all of which are available in English on the DIFC website.<sup>6</sup> These laws were inspired by statutes from other jurisdictions such as England and Wales and the United States, adopting already tried-and-tested systems with the primary purpose of creating a progressive legal framework for

<sup>1</sup> UAE Federal Law No. 8 (2004) available at <https://www.dfsa.ae/getattachment/Your-Resources/Laws-Rules/Federal-Law-No-8-of-2004.pdf.aspx> (last visited on January 9, 2018).

<sup>2</sup> Dubai Law No. 9 (2004) available at [https://www.difc.ae/files/4414/5735/7076/Dubai\\_Law\\_No\\_9\\_of\\_2004\\_-\\_English.pdf](https://www.difc.ae/files/4414/5735/7076/Dubai_Law_No_9_of_2004_-_English.pdf) (last visited on January 9, 2018).

<sup>3</sup> Damien P. Horgan, *The Adventures of the Common Law*, Pace Int'l L. Rev. Online Companion, Dec. 2009, at 1, 8, available at <http://digitalcommons.pace.edu/cgi/viewcontent.cgi?article=1004&context=pilronline> (last visited on January 9, 2018).

<sup>4</sup> S. R. Luttrell, *Choosing Dubai: A Comparative Study of Arbitration under the UAE Federal Code of Civil Procedure and the Arbitration Law of the DIFC*, 9 Bus. L. Int'l 254 (2008).

<sup>5</sup> *Supra* note 2.

<sup>6</sup> <https://www.difc.ae/laws-regulations/legal-database> (last visited January 9, 2018).



attracting investors and facilitating commercial transactions.<sup>7</sup>

## DIFC Courts

Notably, the DIFC is the only free zone in the UAE with its own court system,<sup>8</sup> which is comprised of three courts: (i) The Court of First Instance, which is the trial court; (ii) The Court of Cassation, which is the appeals court and final court; and (iii) The Small Claims Court, which hears cases valued at 100,000 AED (approximately \$27,225) or less (collectively “the DIFC Courts”). The Court of First Instance has exclusive jurisdiction to hear any dispute involving any of the DIFC’s bodies or establishments, any dispute arising from or related to a contract that has been concluded or executed, in whole or in part, within the DIFC or any incident that has occurred in the DIFC. The DIFC Courts may also enforce their or other courts’ judgments against parties registered in the DIFC; however, the enforcement of a DIFC Court judgment in greater Dubai must be done in collaboration with the Dubai courts. Additionally, parties may submit to the jurisdiction of the DIFC Courts by agreement, although this jurisdiction is still limited to disputes of a civil or commercial nature. (DIFC courts do not have jurisdiction over

criminal cases).<sup>9</sup> DIFC Court judges are not residents in the DIFC but hail from all around the common law world and have extensive experience in commercial, banking, arbitration, and insurance matters.<sup>10</sup>

The DIFC Courts operate through an English-based, common law, *stare decisis* system, as opposed to a civil law system that does not recognize courts as law makers or previous court decisions as binding law.<sup>11</sup> This does not mean that English precedent is necessarily binding in the DIFC, but it is persuasive.<sup>12</sup> This is because the DIFC is still a new jurisdiction with a relatively small body of case law and most of the DIFC substantive laws are modeled on English Law.<sup>13</sup> Furthermore, the DIFC choice of law statute provides for the application of the law of England and Wales where the DIFC law is silent, the parties have not agreed on the applicable law, and no other law is sufficiently connected to the dispute.<sup>14</sup>

While the DIFC Courts have proven to be quite efficient, employing an impressive force of competent judges wielding a sophisticated body of substantive law, lawyers have

<sup>7</sup> Michael Hwang, Deputy Chief Justice, DIFC Courts, Judges’ Address at the Lawasia Conference: The Courts of the Dubai International Financial Centre – A Common Law Island in a Civil Law Ocean (Nov. 1, 2008) (transcript available at <https://www.difccourts.ae/2008/11/01/the-courts-of-the-dubai-international-finance-centre-a-common-law-island-in-a-civil-law-ocean/>) (last visited on January 9, 2018).

<sup>8</sup> Since 2004, the UAE has developed nearly 40 industry-specific free zones. Examples include Abu Dhabi Airport Business City, Dubai Media City, Dubai Silicon Oasis, Dubai HealthCare City, and RAK Free Trade Zone. For a list of free zones in the UAE see <https://government.ae/en/information-and-services/business/starting-a-business-in-a-free-zone> (last visited on January 9, 2018).

<sup>9</sup> Dubai Law No. 16, Section 5(A) (2011) (delineating the jurisdiction of the DIFC Courts) available at [https://www.difc.ae/files/8414/5510/4278/Dubai\\_Law\\_No.16\\_of\\_2011\\_English.pdf](https://www.difc.ae/files/8414/5510/4278/Dubai_Law_No.16_of_2011_English.pdf) (last visited on January 9, 2018).

<sup>10</sup> Horgan, *supra* note 3, at 12.

<sup>11</sup> Jayanth K. Krishnan & Priya Purohit, *A Common-Law Court in an Uncommon Environment: The DIFC Judiciary and Global Commercial Dispute Resolution*, 25 Am. Rev. Int’l Arb. 497, 504 (2014) available at <https://ssrn.com/abstract=2482532> (last visited on January 9, 2018).

<sup>12</sup> Hwang, *supra* note 7.

<sup>13</sup> See generally, Hwang, *supra* note 7 (for a discussion of the different statutes in effect in the DIFC).

<sup>14</sup> DIFC Law No. 3 (2004): Law on the Application of Civil and Commercial Laws in the DIFC. available at [https://www.difc.ae/files/9214/5448/9184/Law\\_on\\_the\\_Application\\_of\\_Civil\\_and\\_Commercial\\_Laws\\_in\\_the\\_DIFC\\_DIFC\\_Law\\_No.\\_3\\_of\\_2004.pdf](https://www.difc.ae/files/9214/5448/9184/Law_on_the_Application_of_Civil_and_Commercial_Laws_in_the_DIFC_DIFC_Law_No._3_of_2004.pdf) (last visited on January 9, 2018).



expressed frustration with certain issues that arise after a judgment has been issued and enforcement is sought in the Dubai courts outside the DIFC. This is due to what some characterize as jurisdictional “turf-guarding” between the two courts and a tendency for Dubai courts to deny enforcement on overly-technical procedural grounds.<sup>15</sup> As a result, more cases are currently being referred to arbitration as a more convenient way to enforce final judgements.

## Arbitration

Additionally, with a rise in commercial activity came a surge in commercial disputes and the need for a system to effectively resolve them. Mindful of this natural progression, the DIFC has taken strides to become an arbitration-friendly jurisdiction. Parties are free to opt-in to this advantageous arbitration regime by specifying the DIFC as the seat of the arbitration.

In 2008, the DIFC enacted its arbitration law (“DIFCAL”)<sup>16</sup> based on the UNCITRAL Model Law with only a few modifications, providing practitioners with a readily understandable *lex arbitri*. That same year, the DIFC opened a new arbitration institution in cooperation with the internationally renowned London Court of International Arbitration, dubbed the DIFC-LCIA. Another arbitral institution in operation is the Dubai International Arbitration Centre (“DIAC”). Established in 1994, the DIAC is favored for its specialization in resolving construction disputes.<sup>17</sup> Although the DIAC is not situated within the jurisdictional limits of the DIFC, parties may still opt-in to the DIFC regime by

placing provisions in their arbitration agreement stating that the seat of the arbitration will be the DIFC. Another advantage of seating arbitrations in the DIFC is having the DIFC Courts as the curial court with wide powers to assist and facilitate arbitration, e.g., powers to grant interim measures, to assist in taking of evidence upon request.<sup>18</sup> Having such an experienced judiciary available for such functions is something that is currently missing from other bodies in the region.<sup>19</sup>

## Enforcement

Once an arbitral award has been issued, the time comes to enforce and capitalize on a successful outcome. Legal practitioners can take comfort in DIFCAL’s adoption of a monist view of arbitration: not differentiating between domestic and international arbitrations.<sup>20</sup> Furthermore, under DIFCAL, the grounds on which the DIFC Court can refuse the recognition and enforcement of arbitral awards are significantly more limited than in Dubai/UAE, which still operates under an antiquated arbitration law that allows for a *de facto* review of the merits based on the public policy exception.<sup>21</sup> Awards issued in the DIFC may be submitted to the DIFC Courts for enforcement within the DIFC and are usually ratified within 30 days (as opposed to a possible five months in the Dubai courts).<sup>22</sup> The DIFC judgment on the award can then be converted into a Dubai court judgment under the “protocol of

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<sup>15</sup> Krishnan, *supra* note 11, at 508.

<sup>16</sup> DIFC Law No. 1 (2008), available at [https://www.difc.ae/files/9014/5449/8249/DIFC\\_Arbitration\\_Law\\_2008\\_0\\_1.pdf](https://www.difc.ae/files/9014/5449/8249/DIFC_Arbitration_Law_2008_0_1.pdf) (last visited on January 9, 2018).

<sup>17</sup> Krishnan, *supra* note 11, at 516.

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<sup>18</sup> *Supra* note 14, art. 24.

<sup>19</sup> Horgan, *supra* note 3, at 16.

<sup>20</sup> Luttrell, *supra* note 4.

<sup>21</sup> A. F. M. Maniruzzaman & Ahmed M. Almutawa, *The Delocalization of DIFC Arbitration in Dubai and the Enforcement of Arbitral Awards*, 7 World Arb. Mediation Rev. 321, 326 (2013), available at [https://researchportal.port.ac.uk/portal/files/1805811/IT\\_A\\_WAMR\\_2013\\_ARTICLE.pdf](https://researchportal.port.ac.uk/portal/files/1805811/IT_A_WAMR_2013_ARTICLE.pdf) (last visited on January 9, 2018).

<sup>22</sup> Krishnan, *supra* note 11, at 514-15.

enforcement.”<sup>23</sup> This procedure requires that (1) the judgment be final and executory; (2) the judgment be translated into Arabic; and (3) the DIFC court affix the executory formula. Under Article 7(3)<sup>24</sup>, the Dubai court is prohibited from conducting a review on the merits. Once the award has been converted to a Dubai court judgment, it can be enforced in any of the seven Emirates of the UAE, in all other Gulf Cooperation Council (“GCC”) countries (pursuant to the GCC Convention),<sup>25</sup> and in all countries who are signatories of the Riyadh Convention.<sup>26</sup>

Although this process may not be ideal for arbitration practitioners who are accustomed to having their awards enforced directly in the competent court where the opposing party’s assets are located, it does signify a step towards bringing the practice of arbitration in the region in line with international norms. Prior to the creation of the DIFC, a party seeking enforcement of an arbitral award

would have had to deal directly with the skepticism of local courts in the region. It is remarkable that the creation of one liberal jurisdiction in a judicially conservative region has led to a legitimate, multi-tiered system for streamlining the enforcement of arbitral awards.

With regards to foreign arbitral awards, the UAE became a signatory to the New York Convention (“NY Convention”) in 2006.<sup>27</sup> Therefore, theoretically, any court within the UAE is obliged to enforce a foreign arbitral award (from another signatory state) without a review of the merits and without any regard to its domestic arbitral law. While local courts have shown promise in this respect, a few exceptions remain, and some awards are still being denied enforcement either on technical grounds or on a broad reading of the public policy exception. One example of an overly technical ground for refusing enforcement is that local courts may require the enforcing party to show proof of service in compliance with the UAE Federal Civil Procedure Code.<sup>28</sup> This is likely a temporary phenomenon that can be explained by local judges’ relative lack of exposure to cases brought under the NY Convention. Therefore, it is advisable that parties first seek enforcement in the DIFC, where the judges may be better equipped to deal with such issues.

## Conclusion

Although still not ideal, in over a little more than a decade, the DIFC, Dubai, and the UAE have made significant strides toward becoming a globally recognized locale for

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<sup>23</sup> Dubai Law No. 16 (2011), section 7(2) available at [https://www.difc.ae/files/8414/5510/4278/Dubai\\_Law\\_No.16\\_of\\_2011\\_English.pdf](https://www.difc.ae/files/8414/5510/4278/Dubai_Law_No.16_of_2011_English.pdf) (last visited on January 9, 2018); *See also* Krishnan, *supra* note 11, at 506.

<sup>24</sup> Dubai Law No. 16 (2011), Section 7(3) available at [https://www.difc.ae/files/8414/5510/4278/Dubai\\_Law\\_No.16\\_of\\_2011\\_English.pdf](https://www.difc.ae/files/8414/5510/4278/Dubai_Law_No.16_of_2011_English.pdf) (last visited on January 9, 2018).

<sup>25</sup> The GCC Convention for the Execution of Judgements, Delegations, and Judicial Notifications, 1996. There are currently six parties to this convention: Bahrain, Kuwait, Oman, Qatar, Saudi Arabia, and the UAE. *See* <https://arbitrationlaw.com/library/gulf-cooperation-council-gcc-convention-execution-judgments-delegations-and-judicial> (last visited on January 9, 2018); *see generally*, <https://www.difccourts.ae/2016/01/03/enforcing-difc-court-judgments-and-orders-outside-the-difc/> (last visited on January 9, 2018).

<sup>26</sup> The Riyadh Arab Agreement for Judicial Cooperation, Apr. 6, 1983. There are currently 20 parties to this convention: UAE, Jordan, Bahrain, Tunisia, Algeria, Djibouti, Saudi Arabia, Sudan, Syria, Somalia, Iraq, Oman, Palestine, Qatar, Kuwait, Lebanon, Libya, Morocco, Mauritania, and Yemen. *See* <http://www.refworld.org/docid/3ae6b38d8.html> (last visited on January 9, 2018).

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<sup>27</sup> The New York Arbitration Convention on the Recognition and Enforcement of Foreign Arbitral Awards, Jun. 10, 1958. There are currently 159 state parties to this convention. *See* <http://www.newyorkconvention.org/> (last visited on April 30, 2018).

<sup>28</sup> Luttrell, *supra* note 4.

international commercial arbitration. The UAE has signed the NY Convention, and the DIFC almost wholly adopted the UNICITRAL Model Law and imported a world class arbitration institution. While uncertainties regarding the interpretation and application of the DIFC's laws still exist, parties should be mindful that the DIFC is a

common law jurisdiction, and the clarification of these uncertainties requires an active and sophisticated bar. With close to one hundred international law firms currently operating in Dubai and the steady increase of commercial activity in the region, a time of increased certainty can be expected to come sooner than later. Indeed, the sun is rising from the East.

*William Diab is a recent graduate of the Florida International University College of Law and the President of the International Law Student Association chapter at his law school. He is scheduled to take the Florida Bar in July. wdiab002@fiu.edu*

## Overview of 'Revolving Door' Restrictions In the Arab Middle East

Howard L. Stovall

The term 'revolving door' refers to the movement of individuals back and forth between government sector and private sector employment, often in order to exploit their prior employment to benefit their current employer.<sup>1</sup> This movement between government and private sectors is not necessarily bad (and in some cases might be beneficial, for example, to bring different perspectives into government and business). However, a lack of regulation can also lead to conflicts of interest.

A former government official might be attracted to a private sector position due to his prior government experience, insider information and influence that could be used to unfairly benefit his new employer. Conflicts of interest may also arise when the official is still in public office, for example, if a government official makes biased decisions to benefit a prospective private sector employer.<sup>2</sup>

On the other hand, a former private sector employee who moves to a government position might exhibit bias favoring his former employer in forming public policy,

making procurement decisions, and enforcing regulations.<sup>3</sup>

Of those Western countries with 'revolving door' laws, many have not enacted any restrictions governing an employee's movement from the private sector to the public sector. However, a number of countries require 'cooling-off' periods to address potential conflicts caused by an employee's movement from the public sector to the private sector. This means that, for a specified period of time, former government employees are prohibited from work in the private sector relating to their previous duties in the public sector.<sup>4</sup>

'Cooling-off' periods are based on the notion that the interval between two jobs is relevant to the intensity of any potential conflict. By requiring the passage of a certain period of time after leaving government office, the former public official will theoretically have a decreased ability to benefit his new private sector employer with his previous government connections and inside information.

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<sup>1</sup>Transparency International, "Regulating the Revolving Door," Working Paper #6/2010, accessed at [https://www.transparency.org/whatwedo/publication/working\\_paper\\_06\\_2010\\_regulating\\_the\\_revolving\\_door](https://www.transparency.org/whatwedo/publication/working_paper_06_2010_regulating_the_revolving_door)

<sup>2</sup>Transparency International, "Cooling-Off Periods: Regulating the Revolving Door," Anti-Corruption Helpdesk (5 June 2015), accessed at [https://www.transparency.org/whatwedo/answer/cooling\\_off\\_periods\\_regulating\\_the\\_revolving\\_door](https://www.transparency.org/whatwedo/answer/cooling_off_periods_regulating_the_revolving_door)

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<sup>3</sup>Id.

<sup>4</sup>See generally, Jack Maskell, Congressional Research Service, "Post-Employment, 'Revolving Door,' Laws for Federal Personnel" (January 7, 2014), accessed at <https://fas.org/sgp/crs/misc/R42728.pdf> U.S. federal laws generally restrict only certain representational activities for private employers, such as lobbying and other activities which attempt to influence current federal officials.

Most countries in the Arab Middle East have not enacted any ‘revolving door’ restrictions, whether in any criminal code, civil service law, or anti-conflict of interest law.<sup>5</sup> Although many Arab countries have enacted civil service regulations that place restrictions on the outside commercial activities of current government employees, these restrictions do not extend beyond the employee’s term in government service.

As a notable exception, Egypt has enacted multiple laws imposing ‘revolving door’ restrictions. For example, Article 3 "First" (E) of the Egyptian Commercial Agency Law<sup>6</sup> provides that former employees of the government, local government units, public organizations, or public-sector units and companies, may not engage in commercial agency activities for a two-year ‘cooling off’ period from the date of leaving government service. (Commercial agency activities are defined in Egypt to include undertaking to submit bids or conclude purchasing and selling contracts, or provide other related

services, in the name and for the account of producers and manufacturers.)

In addition, under Article 178 of the Egyptian Companies Law<sup>7</sup>, former government officials who were members of the executive management at their government departments or agencies prior to terminating their government employment are prohibited for three years following their termination from owning an interest in, or working for, any company which is granted special benefits, subsidies, or guarantees or which is party to concession agreements with any government entity.

Finally, the Egyptian government enacted a relatively new Law Prohibiting Conflict of Interest of State Officials (“Egyptian Conflicts Law”)<sup>8</sup>, shortly after former President Mohamed Morsi was overthrown. Under the “Egyptian Conflicts Law,” certain government officials are prohibited from certain activities, including working within six months from leaving office for a private company that operates in the government official’s field of expertise. According to Article 1 of the “Egyptian Conflicts Law”, the law is applicable not only to the President and members of the cabinet, but also to other government and public entity officials (including the heads of public entities).

In Jordan, the Ministry of Public Sector Development has prepared a Code of Ethics and Professional Conduct in Public Service. Article 9E of that Code, dealing with conflicts of interest, states that a civil

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<sup>5</sup>For example, none of the following Omani laws contains any ‘revolving door’ restrictions: Omani Royal Decree No. 7 of 1974 (criminal code), accessed at <http://policehumanrightsresources.org/wp-content/uploads/2016/07/Penal-Code-Oman-1974.pdf>; Omani Royal Decree No. 120 of 2004 (civil service law), accessed at <http://www.oman.om/wps/wcm/connect/6d60e960-c690-42ea-838a-3c99ee25a25a/Civil+Service+Law.pdf?MOD=AJPERES>; and Omani Royal Decree No. 112 of 2011 (law for avoidance of conflict of interests), accessed at <http://www.pogar.org/publications/ac/compendium/oman/related-national-laws/conflict%20of%20interests-a.pdf>

<sup>6</sup>Egyptian Law No. 120 (1982), accessed at [http://www.comercio.gob.es/es-ES/comercio-exterior/politica-comercial/obstaculos-comercio/conterceros-paises/PDF/documentos-relacionados-portal-barreras-comercio-sec/Code94\\_1CommercialAgencyLaw120\\_1982.pdf](http://www.comercio.gob.es/es-ES/comercio-exterior/politica-comercial/obstaculos-comercio/conterceros-paises/PDF/documentos-relacionados-portal-barreras-comercio-sec/Code94_1CommercialAgencyLaw120_1982.pdf)

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<sup>7</sup>Egyptian Law No. 159 (1981) as amended, accessed at

<http://www.gafi.gov.eg/English/StartaBusiness/Laws-and-Regulations/Documents/Lawno159oftheyear1981.pdf>

<sup>8</sup>Egyptian Law No. 106 of 2013, accessed at <https://www.egypt.gov.eg/english/laws/>

servant shall not accept job offers within one year after leaving work at her government department, or work at any institution with which that department had substantial transactions, except upon written approval from the department. Moreover, after leaving work at the department, the civil servant is prohibited from offering any advice to any such institution based on private information related to the programs and policies of her former government department.<sup>9</sup>

Lebanon has also enacted a ‘revolving door’ restriction on government employees, under Article 100 of the Lebanese Law on Civil Servants<sup>10</sup>, which provides in relevant part: “The civil servant is prohibited, for five years as of termination of his [government] service, from working in any establishment that was subject to his oversight in the [government] department where he used to work, or that had regularly supplied products to such department, or had provided works to such department during the civil servant's employment.” The civil servant is also prohibited, during the same period, from having any interest in such establishment, representing it or defending it before courts in litigation filed by such establishment against public departments and establishments.

For instance, a civil servant who was in charge of supervising the operation of restaurants and bakeries would be prohibited for five years from working for such business establishments after termination of

his government service. This prevents the civil servant from using his authority (while in government service) to obtain private sector benefits following termination of his government employment.

Through application of Article 149 of the Lebanese National Defense Law<sup>11</sup>, Lebanese military personnel are subject to the same ‘revolving door’ restrictions. (Article 149 states that “Military personnel shall be governed by the Rules on Civil Servants in all matters that are not addressed by the present Decree Law.”)

By way of contrast, in Qatar, Article 72 of the Military Service Law<sup>12</sup> states that an individual in the military shall not perform any paid work for others or engage in commercial activities during his military service; however, these prohibitions are not expressly applicable after his discharge, and there is a strong argument that they do not extend after that time. Article 72 of that law also states that an individual in the military shall not serve another country for five years after the end of his service, unless upon approval from the competent authority. However, that law does not expressly prohibit working in the private sector after ending his Qatari military service.

Moreover, there appear to be no general ‘revolving door’ restrictions in internal regulations, guidelines or standard employment contract terms imposed by any government ministry or department in the Arab Middle East. (In the event such internal rules exist, they would not be generally available for public review. Any such internal rules would only bind the

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<sup>9</sup>This Code was issued pursuant to Article 67A of the Jordanian Civil Service Regulation No. 82 (2013), accessed at

<http://www.mopds.gov.jo/en/PDF%20Files/Code%20of%20Ethics%20and%20Professional%20Conduct%20in%20Civil%20Service.pdf>

<sup>10</sup>Lebanese Decree Law No. 112 (1959) (copy available in the author’s Chicago office).

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<sup>11</sup>Lebanese Decree Law No. 102 (1983) (copy available in the author’s Chicago office).

<sup>12</sup>Qatari Law No. 31 of 2006, accessed at <http://almeezan.qa/LawPage.aspx?id=3996&language=ar>



relevant former government official, not the company hiring that former official.)

Thus, in the case of hiring an individual formerly part of the military upon his retirement from military service, most Arab Middle Eastern countries do not require any special permission or approval. The end of service certificate that is customarily issued to the employee in each case by the relevant Ministry of Defense specifies the scope of prohibited activities, which usually are limited to a prohibition on serving in a foreign army. The former military officer is otherwise usually permitted to engage in all other civil or commercial activities without any need to apply for special government authorization.

In accordance with many civil service laws in the Arab Middle East, former government employees are forbidden from making personal use of confidential information obtained during government employment. For example, Article 25 of the Kuwaiti Civil Service Law<sup>13</sup> forbids a government employee from divulging any information that should remain secret due to its nature or according to any special instructions. In addition, the government employee is forbidden from publicizing such information absent written permission from the relevant Minister. These restrictions continue to apply even after government employment has ended, *i.e.*, a former government employee may not subsequently use confidential information obtained during his government employment.<sup>14</sup>

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<sup>13</sup>Kuwaiti Law No. 15 (1979), accessed at [www.ilo.org/dyn/natlex/docs/ELECTRONIC/39896/102917/F-2052937373/KWT39896%20Arab.pdf](http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/39896/102917/F-2052937373/KWT39896%20Arab.pdf)

<sup>14</sup>See also Article 34(2)e of the Bahrain Decision No. 51 (2012), the executive regulations to the Civil Service Law, accessed at <https://www.csb.gov.bh/media/document/Regexeeng-51-2012.pdf>; and Article 68 of the UAE Federal

Similar rules apply to military personnel in many Arab Middle Eastern countries. For example, Article 72 of the Qatari Military Service Law states that military personnel shall not disclose any information related to his work, which obligation is expressly stated to continue even after the end of his service.<sup>15</sup>

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As summarized above, most countries in the Arab Middle East have not enacted any ‘revolving door’ restrictions. However, there are exceptions in some of the more mature legal jurisdictions (such as Egypt, Jordan and Lebanon). In addition, rules combatting bribery, corruption and conflicts of interest are well-established throughout the Arab world – notwithstanding any vagaries in the actual enforcement and prosecution of violations. In that light, one might expect that additional Arab countries will enact ‘revolving door’ restrictions in the years ahead, at least as existing government employees increasingly move from public sector service to work in the private sector.

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Human Resources Law, Federal Decree Law No. 11 (2008) as amended, accessed at <https://www.fahr.gov.ae/Portal/Userfiles/Assets/Documents/38e702a7.pdf>

<sup>15</sup>See also Article 104 of Egyptian Law No. 232 of 1959 as amended, regarding Service of Military Personnel, copy available in the author’s Chicago office.



## Parliamentary Participation in the Making and Implementation of International Economic Agreements: The Case of Jordan

Bashar H. Malkawi

### I. Introduction

Trade policy increasingly intersects with areas of domestic, economic, and social policy in Jordan.<sup>1</sup> Therefore, it is vital that elected representatives' views influence the direction of international trade negotiations. In a constitutional monarchy such as Jordan, Parliamentarians must also demonstrate that they are holding their government accountable to its citizens on international trade issues.

Under the Jordanian Constitution, the executive power is vested in the king who exercises his authority, as a head of the Cabinet and the executive power, through ministers.<sup>2</sup> The Cabinet in Jordan consists of the Council of Ministers headed by the prime minister, who must be appointed by the king. Ministers are appointed by the king with the advice of the prime minister.<sup>3</sup> Legislative power rests with the king and the parliament, which consists of a Senate and

Chamber of Deputies, Jordan's equivalent of the U.S. House of Representatives.<sup>4</sup> Various committees, with different membership, exist in the parliament to examine different issues.<sup>5</sup> The most important committees are the Finance and Economy Committee in the

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<sup>4</sup> Id. art. 62. Jordan is divided into a number of constituencies and each constituency is allocated seats specified in a schedule attached to the election law. Currently there are 130 deputies. Electoral Districts Regulation No. 42 of 2001, art. 2, al Jaridah al Rasmiyah No. 4498 (Official Gazette) (July 23, 2001). The Senate, whose members are appointed by the king, consists of not more than one-half the number of the Chamber of Deputies members including the speaker of the Senate (65 senators). DUSTOUR AL-URDUN [Constitution] arts. 63 & 64 (Jordan). The U.S. Congress is divided into two houses: the House of Representatives and the Senate. There are currently 435 members of the House of Representatives, that are allotted based on the population of each state, with each state guaranteed at least one representative. The members of the House stand for election every two years. In addition, there are five non-voting members of the House, from Washington, D.C., American Samoa, Guam, the U.S. Virgin Islands, and the Commonwealth of Northern Mariana Islands. The Senate consists of 100 Senators on the basis of two senators from each state. U.S. Const. art I, § 2.

<sup>5</sup> The Chamber of Deputies has fourteen permanent committees with eleven members in each committee. Among these committees are the legal committee, administrative committee, and international and Arab Affairs committee. Membership in these committees is a two year term. In addition, the parliament may prescribe other permanent or temporary committees as it deems necessary. Internal Regulation of the Chamber of Deputies of 1996, art. 35 & 50, al Jaridah al Rasmiyah No. 4106 (Official Gazette) (Mar. 16, 1996).

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<sup>1</sup> The WTO's scope covers more issues, extending far beyond the traditional domain of tariffs and trade in goods. See Erika Mann, A Parliamentary Dimension to the WTO – More Than Just a Vision? Vol. 7 Journal of International Economic Law 659 (2004). Decisions of the WTO judicial bodies now have a binding character. See Miquel Montanai Mora, A GATT With Teeth: Law Wins Over Politics in the Resolution of International Trade Disputes, 31 COLUM. J. TRANSNAT'L L. 103 107, 123-128, 129-136 (1993).

<sup>2</sup> DUSTOUR AL-URDUN [Constitution] art. 35 (Jordan).

<sup>3</sup> Id. art. 26 & 41 (Jordan).

Senate, and the Finance and Economy Committee in the Chamber of Deputies.<sup>6</sup> Their principal role is to deal with the economy in matters such as budget, foreign debt, and fiscal laws. Their jurisdictions also include unemployment, national housing, and social security. It is unclear from the internal regulations of both houses which committees are responsible for international trade.<sup>7</sup>

The role of parliament in the treaty-making process has been the subject of debate in Jordan for several years. Although exact comparison with other countries proves difficult due to different political and constitutional structures, there is a compelling need for Jordan to catch up to other more comparable legislative systems in the area of parliamentary scrutiny of executive treaty-negotiating and treaty-making powers.<sup>8</sup>

<sup>6</sup> In the U.S. House of Representatives, the Ways and Means Committee is the most powerful committee for overseeing trade policy. The Ways and Means Committee has several subcommittees such as the Trade and Oversight Subcommittees. In the Senate, the Finance Committee has similar power with regard to trade policy.

<sup>7</sup> Internal Regulation of the Chamber of Deputies of 1996, art. 37, al Jaridah al Rasmiyah No. 4106 (Official Gazette) (Mar. 16, 1996).

<sup>8</sup> See Markus Krajewski, External Trade Law and the Constitutional Treaty: Towards a Federal and More Democratic Common Commercial Policy? Vol. 42 Common Market Law Review, 91, 98-101 (2005). In 1924, the U.K. had a requirement, known as the "Ponsonby Rule," which mandated that certain treaties subject to ratification be laid before parliament, with a short explanatory memorandum, for 21 sitting days. It was then open to the House of Commons to debate the treaty. See Cheryl Saunders, 'Articles of Faith or Lucky Breaks', 17 Sydney Law Review 150, 170 (1995). In 2010, the U.K. reformed its system of parliamentary scrutiny of treaties. The Ponsonby Rule was replaced by a statutory process. In short, these statutory changes make it unlawful for the government to ratify a treaty if the House of Commons had repeatedly disallowed ratification. Constitutional Reform and Governance Act 2010

## II. The Process of Ratifying International Economic Agreements

The executive power in Jordan has the right to enter into the negotiation of international agreements without prior approval from parliament.<sup>9</sup> In Jordan, as a unitary country, the sub-divisions in local authority, such as

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(UK), s. 20. Three modes have been devised, throughout the history of U.S. trade policy, to fall within the structure of the U.S. Constitution. The Congress in the first mode exercised its authority given by the Constitution by regulating trade policy. The result was the Smoot-Hawley Tariff Act whereby tariffs rose several-fold. In the second mode, to avoid a similar experience, the U.S. Congress delegated its authority in trade policy to the president through a series of reciprocal trade agreement acts. Through such delegation of authority, the president was able to enter into GATT 1947. However, such authority was confined to reciprocal tariff reduction and did not authorize the president to enter into an agreement establishing an international organization. In other words, it was a tariff-cut authority. Congress devised the third mode through fast track (currently known as Trade Promotion Authority ("TPA")) whereby Congress has oversight authority over trade negotiations. The features of TPA are a vote up or down on a proposed trade agreement, without any modifications, through expedited procedures. See Harold Hongju Koh, The Fast Track and the United States Trade Policy, 18 Brook. J. Int'l L. 143 (1992).

<sup>9</sup> Under the Commerce Clause of the U.S. Constitution, Congress has the power to regulate commerce with foreign nations. In addition, Congress has the exclusive power to regulate commerce among the states and with the Indian Tribes. It also has the authority to "lay and collect Taxes, Duties, Imposts and Excises". See U.S. Const. art. I, § 8, cl. 1. For more on the Commerce Clause, see Michael Conant, The Constitution and the Economy: Objective Theory and Critical Commentary 11, 87-114 (U. Okla. Press 1991). The U.S. executive must have the authority, delegated by Congress, in order to negotiate. In *United States v. Guy W. Capps, Inc.*, the court said "We think, however, that the executive agreement was void because it was not authorized by Congress... The power to regulate foreign commerce is vested in Congress, not in the executive or the courts." See *U.S. v. Guy Capps Inc.*, 204 F.2d 655, 658 (4th Cir. 1953).

municipalities, have no authority concerning matters related to foreign trade such as subsidies, taxation, or other trade measures.<sup>10</sup> Obviously, the reason that local authorities in Jordan do not have power in trade relations is to ensure a coherent policy. A country with a federal system of government such as the U.S. faces the dilemma of reconciling states' laws and practices with international trade agreements, while also preserving states' rights to set local legislation and public standards.<sup>11</sup>

The king of Jordan has the sole authority to conclude and ratify treaties and agreements.<sup>12</sup> Because World Trade

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<sup>10</sup> See Working Party Report, Report of the Working Party on the Accession of Jordan, WT/ACC/JOR/33, para. 43 (Dec. 3, 1999).

<sup>11</sup> States have no authority to enter into agreements or compacts with foreign nations without the consent of Congress. See U.S. Const. art. I, § 10. However, some U.S. states such as New York or California have economies larger than all but a handful of nations. The WTO agreements cover areas in which U.S. states are actively involved such as services, government procurement, product standards, and subsidies. Therefore, states and local governments may act in the international trade arena. See Matthew Schaefer, Twenty-First Century Trade Negotiations, The US Constitution and the Elimination of US State-Level Protectionism, 2 J. Intl. Econ. L. 71, 72 (1999). The federal government can preempt state laws. However, U.S. federal officials are reluctant to use the constitutional power of the Supremacy Clause in their relations with states because of political considerations. The U.S. federal government prefers to encourage states' voluntary compliance.

<sup>12</sup> The king declares war, establishes peace and ratifies treaties and agreements. "Treaties and agreements which involve financial commitments to the Treasury or affect the public or private rights of Jordanians shall not be valid unless approved by the parliament. In no circumstances shall any secret terms contained in any treaty or agreement be contrary to their overt terms." DUSTOUR AL-URDUN [Constitution] art. 33 (I), (II) (Jordan). Before modification, Article 33 incorporated the right to enter into "trade agreements." One might argue that such agreements, after modification, could fall

Organization (WTO) agreements and other economic treaties involve financial commitments of the Treasury and affect the public or private rights of Jordanians, the parliament must subsequently ratify such agreements to give them the status of domestic law.<sup>13</sup> Thus, by the language of the Constitution, these kinds of agreements are not executive agreements. In addition, one can assume that since these kinds of agreements regulate customs duties, which are taxes, they must be approved by the parliament.<sup>14</sup> In order for any international

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under the sole jurisdiction of the king without the approval of the parliament. However, a closer look at the precise language of the current article indicates that the approval of parliament is necessary since trade agreements affect the Treasury. In addition, the practice supports this conclusion. The words "treaties and agreements" in the Jordanian Constitution are also very broad to include international trade agreements. There are executive agreements that do not require the approval of the parliament. These include agreements concerning technical details of diplomacy, agreements detailing the implementation of already approved agreements, and executive agreements that fall within the sole jurisdiction of the executive power. In other words, any agreement that does not affect the Treasury is not subject to approval by the parliament.

<sup>13</sup> See id. arts. 33 (II) & 91. The High Court of Justice in Jordan decided that "The king is the one who ratifies treaties provided that the parliament approves therein if they would alter the country's lands, or deprive its sovereignty, or involve financial commitments on the treasury... Thus, the agreements concluded between the minister of economy and the U.S. representative to Jordan in 1954 were not operational because they were not approved by the authority prescribed by the constitution." See Decision No. 55/27, Journal of the Jordanian Bar Association p. 622 (No. 11 1955). Also, in another decision, the High Court of Justice held that the economic and transit cooperation agreement concluded between Jordan and Lebanon was not operative without the parliament's approval. See Decision No. 57/24, Journal of the Jordanian Bar Association p. 487 (No. 3 1957).

<sup>14</sup> A law must be passed to impose taxes or duties, whether the draft law is self-initiated by the parliament or by the Council of Ministers. See Jordan Const art. 111.

agreement such as a WTO agreement to be enforceable, the Prime Minister's office must publish the agreement in the Official Gazette, so that it is known to the public. Then, and only then, the agreement has the force of law and every local authority, judicial authority, and individual is obliged to abide by it.<sup>15</sup>

### III. Passing Implementing Legislation

As outlined above, the executive branch of government has the power to enter into treaties under the Constitution. Parliament's main role in the treaty-making process is to implement treaties once they have been signed, by passing implementing legislation. In other words, the Jordanian Parliament is required to vote on the domestic legislation that puts into effect the provisions contained in international economic agreements, not to vote on the whole agreement text.<sup>16</sup> For example, the parliament enacted specific legislation that approved Jordan's accession package to the WTO.<sup>17</sup> The broader question of the relationship between national laws and international treaties depends on the constitutional law of each country.<sup>18</sup>

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<sup>15</sup> See Law Sanctioning Jordan's Accession to the World Trade Organization No. 4 of 2000, al Jaridah al Rasmiyah No. 4415 (Official Gazette) (Feb. 24, 2000). The law sanctioning Jordan's accession to the WTO means that the parliament had approved WTO multilateral agreements. Plurilateral WTO agreements were not approved since Jordan is not a member of any of them yet. There is no need to approve the "Trade Policy Review Mechanism" of the WTO because it is procedural. In Mexico, the president is authorized to enter into international treaties that are consistent with the constitution, but they must be ratified by the senate to become effective. See *Constitucion Politica de los Estados Unidos Mexicanos* [Mexican Const.] art. 133.

<sup>16</sup> See Jordan Const art. 111.

<sup>17</sup> See Law Sanctioning Jordan's Accession to the World Trade Organization No. 4 of 2000.

<sup>18</sup> See Paul Reuter, *Operational and Normative Aspects of Treaties*, 20 IS. L. R 123. 129-130 (1985).

Constitutionally requiring the approval of the Jordanian Parliament is designed to protect individual rights by granting the parliament some control over the treaty-making power of the executive. Through passing implementing legislation, Jordanian parliamentarians have the opportunity to exercise due diligence in the scrutiny of such legislation. They also have a responsibility to ensure that any implementing legislation that is passed is in full conformity with the relevant domestic laws.

### IV. Parliamentary Access to Text of International Agreements

The practice of successive Jordanian governments has been to limit access to texts of international agreements to ministers and public servants from the relevant departments.<sup>19</sup> Everything seems to be confidential until scandals or protests

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There are two systems that demarcate the relationship between international agreements and national law - dualism and monism. In dualism, one imagines international agreements are located somewhere in a metaphysical space and need an act of transformation to bring them within the domain of national law. In monism, once an international agreement is concluded it becomes national law without an act of transformation. In other words, in a monism country there is automaticity in the implementation of an international treaty which becomes directly applicable or self-executing. Additionally, in monism, an international agreement prevails in the case of conflict between the agreement and domestic law and even the constitution.

<sup>19</sup> See Taylor Luck, *Jordan Keep up Protests against \$ 10b Gas Deal with Israel*, Gulf News (Oct. 1, 2016), available at <<https://gulfnews.com/news/mena/jordan/jordan-keep-up-protests-against-10b-gas-deal-with-israel-1.1905270>>. See also Seumas Milne, *Jordan Supercasino Secret Deal Was Personally Approved by the Prime Minister*, The Guardian (Sept. 12, 2011), available at <<https://www.theguardian.com/world/2011/sep/12/jordan-prime-minister-supercasino>>.



break out. Under the current system, parliamentarians may only see draft text after an international economic agreement has been authorized for signature, at which point it is too late for the agreement to be changed, arguably not allowing for meaningful parliamentary scrutiny.

Parliamentarians in Jordan should be given access to draft treaty text during negotiations, on a confidential basis.<sup>20</sup> This is in line with the practices of Jordan's negotiating partners such as the U.S., where members of Congress are advised regularly.<sup>21</sup> If members of the parliament in Jordan were afforded this opportunity, it would improve transparency.

## **V. Lack of Knowledge of the WTO in Parliament**

There is significant lack of knowledge of the WTO for many members of parliament in Jordan. Members of Parliament are under-resourced to cope with an increasing number of highly technical and lengthy agreements. This is detrimental to members' effective involvement in international economic affairs.

Jordan, like other Arab countries, faces a limited capacity to negotiate and implement complex international trade agreements.<sup>22</sup>

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<sup>20</sup> Members of the parliament and their staff could be given an opportunity to review the negotiating text of international economic agreements, subject to signing a confidentiality agreement preventing disclosure for a certain period of time.

<sup>21</sup> See USTR Takes Steps to Boost Lawmakers' Access to TPP Negotiating Text, Inside U.S. Trade, 16 (March 20, 2015).

<sup>22</sup> The Doha Ministerial Declaration states "We shall continue to make positive efforts designed to ensure that developing countries, and especially the least-developed among them, secure a share in the growth of world trade commensurate with the need of their economic development. In this context, enhanced

Indication of this is the dearth of quality research on the topic. No extensive publications are available in Arabic. Providing the necessary - both in Arabic and English - written materials, manuals, guides to international economic agreements, and other communications and policy development tools by ministries of trade would be useful.

In the context of informing parliaments in Arab countries and the general public, an important step has been taken to establish "unofficial" Arabic language websites where all WTO documents are translated into Arabic.<sup>23</sup> Though it is a welcome gesture, there are two drawbacks to translating these documents into Arabic. First, the information on the Arabic language website of the WTO is not updated very frequently. The reason could be that it takes much time and extensive resources to translate from English into Arabic. There are certain trade terms and/or phrases with intrinsic and subtle nuances that might be impossible to translate into Arabic. As such, the meaning of an entire word or phrase could be lost in translation. Another drawback is the reality that reading WTO information available on an Arabic website is not enough to develop comprehensive knowledge or expertise in international trade law. These scarce resources directed toward the WTO Arabic website might be put to better use by devoting them to training on international trade law.

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market access, balanced rules, and well-targeted, sustainably financed technical assistance and capacity-building programs have important roles to play." See Doha Ministerial Declaration, Nov. 14, 2001, WTO Doc. No. WT/MIN(01)/DEC/1, at para. 2.

<sup>23</sup> The Arab-based Talal Abu-Ghazaleh & Co. foundation is administering the website. It can be accessed at < <http://www.wtoarab.org/>>.

The Jordanian Government must develop a strategy for members of the parliament aimed at raising awareness of the WTO and better integrating parliament into the multilateral trading system. An institution, perhaps named the Inter-Parliamentarian Academy for International Economic Law, may be needed to fill the gap in WTO knowledge. The institution could have a budget funded by contributions and donations from the government and private sector proportionately. The purpose of the center would be to train members of Parliament and their staff in different areas of international trade law. Over several years, these parliamentarians and their staff would become human capital (knowledge and skill) that would be able to help Jordan defend its interests as they relate to international economic matters. Implementing this proposal would take a significant period of time, a decade perhaps, but its effects would promote long-term benefits to Jordan.

## VI. Communicating with The Public

Generally speaking, the conclusion of any international economic agreement should be surrounded with some fanfare and contention. This noise could be related to conflicts of sovereignty as a result of the agreement, labor and environment, or culture.

These days, it is fashionable in Jordanian circles to discuss free trade, environment, labor, e-commerce, intellectual property, and the U.S.-Jordan Free Trade Agreement (US-JO FTA). On the Jordanian side, one would have expected some noise over the conclusion of the free trade agreement with the U.S. However, there was no substantial objection to the agreement at all. As a matter of fact, the Parliament of Jordan, the first and foremost legislative body in the

country, approved the FTA by “acclamation” without debate.<sup>24</sup>

On the other hand, the US-JO FTA languished in the U.S. Congress for almost a year.<sup>25</sup> Indeed, some U.S. Congressmen sought to block the passage of the agreement. Some U.S. industries were opposed to the imposition of labor and environmental standards through trade sanctions contained in the agreement. Representatives from the American Farm Bureau Federation, the U.S. Chamber of Commerce, and the Business Roundtable (an association of chief executive officers of 150 U.S. companies) stated their belief that the labor and environmental provisions should be stripped from the agreement. For example, the U.S. Chamber of Commerce opposed the inclusion of trade sanctions and stated that “[the] agreement was sought out for the sole purpose of loading it with labor and environmental standards” with the intention of using it “as a template that future trade agreements should follow.”<sup>26</sup>

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<sup>24</sup> The Jordanian Government did not put forward to the parliament its reasons for entering into the FTA, its position in the negotiations with the U.S. (for example, what was negotiable/non-negotiable), details and factual data on the FTA, ex ante and ex post information on the full impact of the FTA (whether economic, social, or cultural), or the obligations the FTA would impose.

<sup>25</sup> See J.L. Laws, Senate Committee Approves Jordan Free Trade Agreement (July 27, 2001), available at Lexis Environment and Energy Daily (stating that Sen. Phil Gramm vowed to block the US-JO FTA and reporting on letters exchanged between U.S. and Jordanian officials stating that they do not expect or intend to use the agreement’s dispute settlement provisions in a manner that results in blocking trade).

<sup>26</sup> See J.L. Laws, Business Groups Blast Jordan Free Trade Agreement at Hearing, Environment and Energy Daily (Mar. 30, 2001), available at Lexis.

Despite a general anti-globalization attitude in Jordan, no public polls were conducted to determine the strength of public support for the FTA.<sup>27</sup> Many cheerleading articles in Jordanian newspapers exalted the FTA. However, many citizens are becoming more concerned about what globalization and increased trade liberalization mean for them in their day-to-day lives. It is vital that elected representatives communicate to citizens how trade negotiations are developing and what the expected impacts of any potential deal may be.

## Conclusions

Over the past decade, the Jordanian executive extensively used its authority to ratify numerous international economic agreements with its trading partners from all over the world. This has enabled Jordan to enact very ambitious international agreements with trade provisions. These trade chapters – which go beyond the reduction of tariffs – deal with all sorts of issues that are complex and affect the daily lives of citizens.

As it currently stands, the involvement of the Jordanian Parliament in the different stages of the negotiation process of international economic agreements is somewhat marginal. The parliament plays a

role only after the fact, to approve or otherwise ratify international economic agreements already negotiated by the government. Parliament may subsequently be consulted and even asked to approve international agreements and treaties; but the actual ratification is often strictly an act of the executive branch of government.

Generally, international economic agreements are ratified and implemented in Jordan without extensive parliamentary hearings or detailed study. For example, the U.S.-Jordan Free Trade Agreement was signed in record time, after several rounds of negotiations, on October 24, 2000.<sup>28</sup> The Jordanian Parliament ratified the U.S.-Jordan Free Trade Agreement by acclamation in May 2001.<sup>29</sup>

The Jordanian Parliament must be assertive in exercising its role in negotiating and influencing the substance and outcome of treaty negotiations, especially those related to international economic issues. The parliament must make intelligent use of the mechanisms provided for in the Constitution and other legal documents in order to seek to influence the content of treaties. Parliament and its committees can play a useful role in monitoring the work of Jordan's negotiators

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<sup>27</sup> See Halim Abu Rahmeh, Prospects of the Free Trade Agreement with the United States, *Jordan Times* (Oct. 31, 2000), at 11. See Francesca Sawalha, Officials Convinced FTA with US Will Create Golden Opportunities, *Jordan Times*, Nov. 1, 2000, at 1. See Tareq Ayyoub, OIZs, US FTA Could Turn Jordan into a Textile Industry Regional Hub, *Jordan Times*, Oct. 30, 2001, at 11. See also Rana Awwad, Local Industrialists Sign 22 Export Deals Under Jordan-US FTA, *Jordan Times*, May 14, 2002, at 11 (stating that officials say the FTA provides for the simplest rules of origin); Taher H. Kanaan, Impact of the Jordan-USA Free Trade Area Agreement on the Banking and Financial Services Sector, *THE ARAB BANK REV.*, Vol. 3 No. 2 (2001)..

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<sup>28</sup> This record time of approximately four months of negotiations can be compared with the 15 months of intensive debate between the U.S. and Israel which resulted in the conclusion of the US-Israel FTA. See ANDREW JAMES SAMET & MOSHE GOLDBERG, *THE U.S.-ISRAEL FREE TRADE AREA AGREEMENT* 1.02 (1989). NAFTA parties completed negotiations in 1992 after 14 months of negotiations. Along the lines of the US-JO FTA, the US-Bahrain FTA of 2004 was concluded within four months starting January 2004 and ending in May of the same year.

<sup>29</sup> The US-JO FTA was approved during the extraordinary session of the Parliament starting April, 22, 2001. See Royal Decree, Official Gazette No. 4486, page 1664 (April 1, 2001).



as the latter attempt to realize the negotiating mandates assigned to them. To accomplish this goal, parliamentarians need to intensify their efforts to closely follow trade negotiations. To enhance its involvement in international economic affairs, the Jordanian Parliament could make use of briefings and request that government officials appear before parliamentary committees. There should also be public hearings organized by the Finance and Economy Committee in the Senate and the Finance and Economy Committee in the Chamber of Deputies, which optimally would produce subsequent public reports.

The involvement of the Jordanian Parliament should not be limited to the conclusion of agreements where consent by the parliament is required. The parliament and government must adopt a transparent mechanism whereby the parliament is informed every step of the way in negotiating international agreements up through their ratification. In other words, the Jordanian Parliament should be able to examine international economic agreements before they are signed and ratified.

The Jordanian Parliament must create a Standing Committee on International Agreements for the purpose of conducting public reviews of such agreements, prior to the approval that will bind Jordan under international law. A more radical step would be to amend the Jordanian Constitution to explicitly mandate a role for the parliament in treaty-making in advance of ratification or accession. Such an amendment would empower the parliament to review and approve nearly all treaties of significance, in addition to granting it authority over the enactment of any legislation required to give

a treaty domestic effect.

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## Twenty-First Century Middle East and Global Rule of Law Under Siege: A Proposed ABA Virtual Grassroots Intervention

Gregg B. Brelsford

“In all societies, lawyers are essential to realizing rights enshrined in law . . .”<sup>1</sup>  
 “[L]awyers play a crucial role in shaping society and its institutions.”<sup>2</sup>

### Introduction

Twenty-first century rule of law is under siege and governmental accountability is shrinking, in the Middle East and in developing countries around the globe. These worldwide battles are so widespread and strikingly similar that it is as if terrorists and authoritarian and dictatorial regimes are widely sharing a rule of law-attack “best-practices” manual.<sup>3</sup> Indeed, alarm has risen

at the highest levels of the American Bar Association (“ABA”). In the seventeen months ending November 2017, ABA presidents issued 15 statements calling out attacks on global rule of law – more than in the previous thirty months combined.<sup>4</sup>

Funding to reverse this unsettling siege is shrinking too. As of November 2017, the U.S. government had proposed reducing aid to developing countries, including rule of law development, by 31% in fiscal year 2018.<sup>5</sup> This aid is America’s most important tool for strengthening rule of law, civil society, and democracy in the developing world.

What can be done? Clearly, bolstering global rule of law is now vitally important. Existing ABA and other rule of law programs are doing heroic work. However, imagine doing more.

The legal profession is the heart of rule of law. And building rule of law is at the heart of ABA’s mission. With over 400,000 members and more than twenty-five years of

<sup>1</sup> William Hubbard, “ABA President Statement on Lawyers in China,” ABA Archives, dated August 3, 2015, available at [https://www.americanbar.org/news/abanews/aba-news-archives/2015/08/aba\\_president\\_willia.html](https://www.americanbar.org/news/abanews/aba-news-archives/2015/08/aba_president_willia.html) (last visited November 24, 2017).

<sup>2</sup> J. Montoya, *The Current State of Legal Education and Reform in Latin America: A Critical Appraisal*, 59 J. Legal Education, 545 (2010), available at [jle.aals.org/cgi/viewcontent.cgi?article=1280&context=home](http://jle.aals.org/cgi/viewcontent.cgi?article=1280&context=home) (last visited November 25, 2017).

<sup>3</sup> “[M]odern authoritarianism defends and propagates itself as regimes from different regions and with diverse socioeconomic foundations *copy and borrow techniques of political control*. . . . There is also *growing replication of what might be called authoritarian best practices*.” Arch Puddington, *Breaking Down Democracy: Goals, Strategies, and Methods of Modern Authoritarians*, Freedom House, 2017, emphasis added, available at <https://freedomhouse.org/report/special-reports/breaking-down-democracy-goals-strategies->

[and-methods-modern-authoritarians](#) (last visited November 26, 2017).

<sup>4</sup> See *infra* nn.17-31 and accompanying text.

<sup>5</sup> Gardiner Harris, *State Department to Offer Buyouts in Effort to Cut Staff*, N.Y. Times.com, November 10, 2017, available at [https://www.nytimes.com/2017/11/10/us/politics/state-department-buyouts.html?\\_r=0](https://www.nytimes.com/2017/11/10/us/politics/state-department-buyouts.html?_r=0) (last visited November 25, 2017).

global rule of law-development experience, the ABA is uniquely positioned to strengthen global rule of law by working closely with judges, prosecutors, lawyers and law professors (collectively “Legal Professionals” or “LPs”) in the Middle East and in developing countries around the world.<sup>6</sup>

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<sup>6</sup> The term “developing country” refers here to economic development, not the sophistication of the legal system leaders and professionals. Indeed, every day, exceptional LPs fight courageously for rule of law in very challenging circumstances. Even so, in many places, governments and terrorists undermine fundamental freedoms, harass and close civil society and non-governmental organizations and attack lawyers and courthouses. For example, in *one 28-day period* in 2016, terrorist attacks in Pakistan killed at least 83 people, *including 64 lawyers*, and injured 180. Bilal Anwar Kasi, the president of the Balochistan Bar Association, was attacked and killed on August 8, 2016. *65 killed, over 150 injured in blast at hospital in Pakistan's Quetta*, *Indiatimes.com*, August 8, 2017, available at <https://timesofindia.indiatimes.com/world/pakistan/55-killed-over-100-injured-in-blast-at-hospital-in-Pakistans-Quetta/articleshow/53596823.cms> (last visited November 24, 2017); *Quetta Attack Sparks Nationwide Lawyers' Strike in Pakistan*, *NBC News.com*, August 9, 2016 (70 dead, including 60 lawyers, 130 injured), available at <https://www.nbcnews.com/news/world/quetta-attack-sparks-nationwide-lawyers-strike-pakistan-n626201> (last visited November 23, 2017); *Pakistan blast at court leaves several dead in Mardan*, *BBC.com*, September 2, 2016 (12 dead, including 3 lawyers, 50 injured), available at <http://www.bbc.com/news/world-asia-37253739> (last visited November 24, 2017). Nor does this article suggest that the flow of knowledge is solely one-way from developed countries to developing countries or that developed countries have nothing valuable to learn from developing countries. Rather, the thrust of this article is that developed countries have a rich legal-profession “infrastructure” and a “critical mass” of skills-training and knowledge generation and dissemination that is not yet generally present in developing countries, that developing countries can benefit from it, and that developed countries ought to share it.

The strategy proposed here is to create a new 21<sup>st</sup>-century paradigm – an innovative, cost-effective, positive-sum, scalable, virtual strategy to strengthen rule of law through global capacity building in the Middle East and other countries at the grassroots level of the legal profession. The ABA should extend *complimentary* ABA and committee memberships to LPs who participate in ABA rule of law programs worldwide but cannot afford ABA dues.<sup>7</sup> Because most ABA member activity is electronic, building on the ABA’s existing digital system will be *essentially cost-free*. In this era of embattled rule of law and declining foreign aid, the ABA’s virtual interaction with LPs on the grassroots level, on a continual basis, is priceless.

There are striking LP “light bulb moments” when participants in rule of law-development programs first encounter American legal thinking and interactive training in legal skills, rule of law issues, and professional values.<sup>8</sup> These “light bulb moments” spark immense enthusiasm for further engagement. The virtual strategy outlined here could reach LPs at all levels and practice areas, including those who are

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<sup>7</sup> The number of eligible LPs who would actually use a complimentary membership would be filtered by (i) capability in using the English language, (ii) access to a computer, and (iii) willingness to participate from distant time zones.

<sup>8</sup> The personal observations in this article are based on the author’s decade (2006-2016) of rule of law-development work and law teaching in the Persian Gulf, the Baltic States, the Balkans, the U.S. and the turbulence and turmoil of the Arab Spring in the Middle East and North Africa. For a brief description of the author’s development work in Egypt, see G. Brelsford, *Revolution, Turmoil and Mixed Stability in Egypt: ABA Rule of Law Development Programming and Institutionalization 2012-2016*, 1 Middle East Review 6-7 (September 2016), available at Committee Publications <http://apps.americanbar.org/dch/committee.cfm?com=IC850000> (last visited November 27, 2017).

relatively isolated in their home legal systems, such as women, religious and ethnic minorities, disabled persons and lesbian, gay, bisexual and transgender (“LGBT”) individuals.<sup>9</sup> It could also create a worldwide body of LPs attuned to the value of the rule of law who are embedded in developing country civil society. Benefits to the ABA could include enriched committee composition and expanded business referrals for ABA lawyers.

This strategy is not a quick fix. However, if given a chance, it could dramatically expand the ABA’s 21<sup>st</sup>-century rule of law-building impact and global presence. Why not use this virtual strategy to fortify global rule of law by integrating grassroots LPs into the largest, most sophisticated, exciting and dynamic professional legal association in the world?

### Defining Rule of Law and Integrating the Proposed Virtual Strategy into the Existing Framework

There is no broadly accepted definition of rule of law.<sup>10</sup> Here, it means a legal system

<sup>9</sup> The ABA is deeply concerned about the relative isolation of disabled and LGBT lawyers in the US as well. See ABA launches nationwide study to expand opportunities for disabled, LGBT+ lawyers, ABA News, May 10, 2017 (“Too often, the LGBT+ communities and/or those who have disabilities are not included in efforts to expand career and professional diversity, especially in the legal profession.”), available at [https://www.americanbar.org/news/abanews/aba-news-archives/2017/05/aba\\_launches\\_nationw.html](https://www.americanbar.org/news/abanews/aba-news-archives/2017/05/aba_launches_nationw.html) (last visited November 21, 2017).

<sup>10</sup> James R. Silkenat, *The American Bar Association and the Rule of Law*, 67 SMU L. R. 746 (2014), available at

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*ABA ROLI’s mission is “to promote justice, economic opportunity, and human dignity through the rule of law.”*

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governed by a constitution and prospective laws generated by representatives chosen through fair elections, in which the government and its citizens are held accountable by enforcing constitutional and other rights through an independent judiciary.<sup>11</sup> This requires skilled practitioners in courts, law schools and private and governmental law practice settings who are explicitly committed to the rule of law.

Similarly, no generally agreed upon strategy for rule of law-development currently exists. But all strategies have one universal objective: to enhance the legal skills and knowledge of LPs and thereby strengthen the rule of law. The ABA Rule of Law Initiative (“ROLI”) provides training that is delivered on the ground in 50 countries.<sup>12</sup> Other strategies offer online training, organize conferences and advise on drafting constitutions and statutes, and involve collaborative work with bar associations outside the U.S. and ABA leadership visits to LP leaders in other countries. The virtual strategy proposed here does not compete

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<http://scholar.smu.edu/smult/vol67/iss4/7/> (last visited May 1, 2017). See also Sundaresh Menon, Chief Justice of Singapore, *The Rule of Law: The Path to Exceptionalism*, Vo. 28, No. 2, September 2016 Singapore Academy LJ 413-427, 414 (rule of law is a seemingly elastic concept), available at [http://www.malaysianbar.org.my/speeches/speech\\_by\\_the\\_honourable\\_chief\\_justice\\_sundaresh\\_memon\\_at\\_the\\_american\\_law\\_institute\\_93rd\\_annual\\_meeting\\_16\\_may\\_2016.html](http://www.malaysianbar.org.my/speeches/speech_by_the_honourable_chief_justice_sundaresh_memon_at_the_american_law_institute_93rd_annual_meeting_16_may_2016.html) (last visited December 30, 2017).

<sup>11</sup> Menon, *supra* n.10 at 414 (“working definition of the rule of law . . . all persons and authorities with the state, whether public or private, should be bound by and entitled to benefit from laws publicly made, taking effect (generally) in the future and publicly administered in the courts”).

<sup>12</sup> ABA Rule of Law Initiative, [https://www.americanbar.org/advocacy/rule\\_of\\_law.html](https://www.americanbar.org/advocacy/rule_of_law.html) (last visited May 3, 2017).

with those other strategies. It builds on them by adding a continuous, interactive, digital component.

### **The ABA Mission to Strengthen Global Rule of Law**

The ABA, the Section for International Law (“SIL”), ROLI, and the ABA-UNDP International Legal Resource Center (“ILRC”) are world leaders, with others in the U.S. and elsewhere, in the solemn mission of building rule of law and a global community of lawyers. Goal IV of the ABA mission is to advance rule of law “throughout the world.”<sup>13</sup> Part of the SIL’s mission is “to promote professional relationships with lawyers similarly engaged in foreign countries.”<sup>14</sup> ROLI’s mission is “to promote justice, economic opportunity, and human dignity through the rule of law.”<sup>15</sup> The ILRC’s mission is to “promote the rule of law around the world.”<sup>16</sup> The virtual strategy outlined here is in their “sweet spot.”

### **21<sup>st</sup> Century Assault on Rule of Law in the Middle East and Other Developing Countries**

A sample of current data in three domains of the global rule of law siege illustrates the

present trend of embattled rule of law and diminishing governmental accountability in today’s Middle East and elsewhere around the world.

#### **1. ABA President Statements**

Sadly, despite valiant efforts by the ABA and others, the siege on the rule of law appears to be accelerating. That trend has not escaped the ABA’s notice. Recent statements by the ABA President have addressed attacks on courthouses in Syria<sup>17</sup>, Afghanistan<sup>18</sup>, and Pakistan<sup>19 20</sup>; threats to the independence of the legal profession in

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<sup>17</sup> Statement of ABA President Linda Klein re: Attack on Palace of Justice in Damascus, Syria March 20, 2017, ABA News Archives, available at [https://www.americanbar.org/news/abanews/aba-news-archives/2017/03/statement\\_of\\_abapre0.html](https://www.americanbar.org/news/abanews/aba-news-archives/2017/03/statement_of_abapre0.html) (last visited November 21, 2017)

<sup>18</sup> Statement of ABA President re: Recent Terrorist Attacks on Courts in Afghanistan and Pakistan, ABA News Archives, March 1, 2017, available at [https://www.americanbar.org/news/abanews/aba-news-archives/2017/03/statement\\_of\\_abapre.html](https://www.americanbar.org/news/abanews/aba-news-archives/2017/03/statement_of_abapre.html) (last visited November 11, 2017). In a statement issued on February 8, 2017 in the aftermath of the attack on the Supreme Court in Kabul, the U.N. Assistance Mission in Afghanistan noted a pattern of assaults on judicial authorities, including 74 documented attacks targeting judges, prosecutors and judicial staff, resulting in 89 dead and 214 injured since 2015. UN News Centre, February 8, 2017, available at <http://www.un.org/apps/news/story.asp?NewsID=56132#.WbgK4aht4zM> (last visited November 21, 2107).

<sup>19</sup> Statement of ABA President re: Recent Terrorist Attacks on Courts in Afghanistan and Pakistan, ABA News Archives, March 1, 2017, available at [https://www.americanbar.org/news/abanews/aba-news-archives/2017/03/statement\\_of\\_abapre.html](https://www.americanbar.org/news/abanews/aba-news-archives/2017/03/statement_of_abapre.html) (last visited November 11, 2017).

<sup>20</sup> Statement of ABA President Linda Klein re: Terrorist attack on district court in Mardan, Pakistan, ABA News Archives, September 3, 2017, available at [https://www.americanbar.org/news/abanews/aba-news-archives/2016/09/statement\\_of\\_abapre.html](https://www.americanbar.org/news/abanews/aba-news-archives/2016/09/statement_of_abapre.html) (last visited November 21, 2017).

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<sup>13</sup> ABA Mission and Goals, [https://www.americanbar.org/about\\_the\\_aba/aba-mission-goals.html](https://www.americanbar.org/about_the_aba/aba-mission-goals.html) (last visited November 12, 2017).

<sup>14</sup> Section of International Law, Who We Are, [https://www.americanbar.org/groups/international\\_law/about\\_us.html](https://www.americanbar.org/groups/international_law/about_us.html) (Who We Are) (last visited November 12, 2017).

<sup>15</sup> About ABA ROLI, [https://www.americanbar.org/advocacy/rule\\_of\\_law/about.html](https://www.americanbar.org/advocacy/rule_of_law/about.html) (About Us) (last visited November 12, 2017).

<sup>16</sup> About the ILRC, [https://www.americanbar.org/groups/international\\_law/initiatives\\_awards/international\\_legal\\_resource\\_center/about.html](https://www.americanbar.org/groups/international_law/initiatives_awards/international_legal_resource_center/about.html) (last visited November 12, 2017).



Malaysia<sup>21 22</sup>, Pakistan (assassination of the president of the Baluchistan Bar Association)<sup>23</sup>, Tanzania (non-fatal shooting of the president of the Tanganyika Law Society<sup>24</sup>, and Kenya (murder of lawyer representing activist alleging police misconduct)<sup>25</sup>; threats to judicial independence in Poland<sup>26</sup>; election constitutional crises in Venezuela<sup>27</sup>;

<sup>21</sup> Statement of ABA President Paulette Brown re: Malaysia's High Court Decision on the Sedition Act of 1948 (April 14, 2016), available at [https://www.americanbar.org/news/abanews/aba-news-archives/2016/04/statement\\_of\\_abapre0.html](https://www.americanbar.org/news/abanews/aba-news-archives/2016/04/statement_of_abapre0.html).

<sup>22</sup> Letter from ABA President to Prime Minister of Malaysia, September 23, 2016, available at [https://www.americanbar.org/content/dam/aba/administrative/human\\_rights/malaysiarolletter\\_92316.authcheckdam.pdf](https://www.americanbar.org/content/dam/aba/administrative/human_rights/malaysiarolletter_92316.authcheckdam.pdf) (last visited November 21, 2017).

<sup>23</sup> Letter from ABA President Linda Klein to Prime Minister of Pakistan re: Assassination of Bilal Kasi and Attacks on Lawyers (August 17, 2016), available at [https://www.americanbar.org/content/dam/aba/administrative/human\\_rights/abalettertopakistan.authcheckdam.pdf](https://www.americanbar.org/content/dam/aba/administrative/human_rights/abalettertopakistan.authcheckdam.pdf)

<sup>24</sup> Statement of ABA President re: The shooting of the president of the Tanganyika Law Society, ABA News Archives, September 8, 2017, available at [https://www.americanbar.org/news/abanews/aba-news-archives/2017/09/statement\\_of\\_abapre0.html](https://www.americanbar.org/news/abanews/aba-news-archives/2017/09/statement_of_abapre0.html) (last visited November 21, 2017).

<sup>25</sup> ABA expresses concern over murder of Kenyan human rights lawyer Willie Kimani, ABA News Archives, July 8, 2016, available at [https://www.americanbar.org/news/abanews/aba-news-archives/2016/07/aba\\_expresses\\_concer.html](https://www.americanbar.org/news/abanews/aba-news-archives/2016/07/aba_expresses_concer.html) (last visited November 21, 2017).

<sup>26</sup> Statement of ABA President Linda A. Klein re: Judicial Independence in Poland, ABA News Archives, July 20, 2017, available at [https://www.americanbar.org/news/abanews/aba-news-archives/2017/07/statement\\_of\\_abapre0.html](https://www.americanbar.org/news/abanews/aba-news-archives/2017/07/statement_of_abapre0.html) (last visited November 21, 2017).

<sup>27</sup> Statement of ABA President Linda Klein re: Political unrest in Venezuela, ABA News Archives, August 4, 2017, available at [https://www.americanbar.org/news/abanews/aba-news-archives/2017/08/statement\\_of\\_abapre.html](https://www.americanbar.org/news/abanews/aba-news-archives/2017/08/statement_of_abapre.html) (last visited November 21, 2017).

impunity and endemic corruption in Guatemala<sup>28</sup>; human rights in China<sup>29</sup>; the violations of due process in Turkey since the failed coup<sup>30</sup>; and atrocities in Myanmar.<sup>31</sup>

## 2. Falling Global Rule of Law Rankings

World Justice Project (“WJP”) Rule of Law Index Reports calculate rule of law country scores and rankings for 113 countries.<sup>32</sup> The

<sup>28</sup> Statement of Hilarie Bass, president, American Bar Association re: UN Commission Against Impunity in Guatemala, ABA News Archives, August 24, 2017, available at [https://www.americanbar.org/news/abanews/aba-news-archives/2017/08/statement\\_of\\_hilarie.html](https://www.americanbar.org/news/abanews/aba-news-archives/2017/08/statement_of_hilarie.html) (last visited November 21, 2017).

<sup>29</sup> Statement of ABA President Paulette Brown re: Call for Chinese government to protect human rights, ABA News Archives, April 12, 2016, available at [https://www.americanbar.org/news/abanews/aba-news-archives/2016/04/statement\\_of\\_abapre1.html](https://www.americanbar.org/news/abanews/aba-news-archives/2016/04/statement_of_abapre1.html) (last visited November 21, 2017).

<sup>30</sup> Statement of Paulette Brown, President, American Bar Association re: Recent incidents in Turkey, ABA News Archives, July 19, 2016, available at [https://www.americanbar.org/news/abanews/aba-news-archives/2016/07/statement\\_of\\_paulett.html](https://www.americanbar.org/news/abanews/aba-news-archives/2016/07/statement_of_paulett.html) (last visited November 21, 2017).

<sup>31</sup> Statement of ABA President Hilarie Bass re: Call for action to stop atrocities in Myanmar, ABA News Archives, November 7, 2017, available at [https://www.americanbar.org/news/abanews/aba-news-archives/2017/11/statement\\_of\\_abapre1.html](https://www.americanbar.org/news/abanews/aba-news-archives/2017/11/statement_of_abapre1.html) (last visited November 12, 2017).

<sup>32</sup> The World Justice Project Rule of Law Index, available at <https://worldjusticeproject.org/our-work/wjp-rule-law-index> (last visited May 2, 2018). World Justice Project Rule of Law Index Reports provide a “portrait” of the rule of law in 113 countries by providing scores and rankings of the 113 countries organized around eight factors: constraints on government powers, absence of corruption, open government, fundamental rights, order and security, regulatory enforcement, civil justice, and criminal justice. Scores range from 0-1, with 1 indicating the strongest adherence to the rule of law. A country’s scores on each of the eight factors are combined to yield the country’s overall score. Each of the 113 countries is then ranked (from 1 to 113) based on the

WJP rankings for 2014<sup>33</sup> and 2017/2018<sup>34</sup> for ten “representative” developing countries in the Middle East and other regions of the world are shown below.<sup>35</sup> These countries fell as much as 42 positions from 2014 to 2017/2018. Some Middle East countries accounted for the more dramatic drops.

#### WJP Rule of Law Index – Global Rankings

Country	2014	2017/2018	Change in Global Rank: 2014-2016 [Middle East in bold]
China	76	75	-1
<b>Jordan</b>	38	42	<b>-4</b>
<b>Morocco</b>	52	67	<b>-15</b>
Russia	80	89	-9
Uganda	90	104	-14
<b>Tunisia</b>	41	54	<b>-13</b>
Hungary	30	50	-20
<b>Egypt</b>	74	110	<b>-36</b>
<b>Lebanon</b>	49	87	<b>-38</b>
<b>Turkey</b>	59	101	<b>-42</b>

### 3. Shrinking Fundamental Rights and Judicial Independence

Despite constitutional guarantees, many countries constrict fundamental freedoms of

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country’s overall score. World Justice Project Rule of Law Index 2017/2018 Report at 2, available at <https://worldjusticeproject.org/our-work/wjp-rule-law-index/wjp-rule-law-index-2017%E2%80%932018> (last visited May 2, 2018).

<sup>33</sup> WJP Rule of Law Index 2014 Report, available at <https://worldjusticeproject.org/our-work/publications/rule-law-index-reports/wjp-rule-law-index-2014-report> (last visited April 29, 2018).

<sup>34</sup> WJP Rule of Law Index 2017/2018 Report, available at <https://worldjusticeproject.org/our-work/wjp-rule-law-index/wjp-rule-law-index-2017%E2%80%932018> (last visited April 29, 2018).

<sup>35</sup> A “higher” rank indicates “weaker” adherence to the rule of law – a rank of 113 is the worst.

association, expression, press, and religion.<sup>36</sup> Many have grown suspicious of foreign NGOs as agents of subversion<sup>37</sup> and restrict their work through ambiguous legislation and harassment.<sup>38</sup> Judges who seek to hold their governments accountable to domestic laws are increasingly punished.<sup>39</sup>

Tunisia. The draft Law on the Repression of Offences against Armed Forces would allow indiscriminate restriction of any expression that would appear to be in some way critical of armed forces.<sup>40</sup> Writing an article on the security flaws of a counterterrorism

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<sup>36</sup> U.S Const. amend. I; UN International Convention on Civil and Political Rights, articles 19, 21 and 22, available at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx> (last visited November 28, 2017); UN Universal Declaration of Human Right, articles 19 and 20, available at <http://www.un.org/en/universal-declaration-human-rights/> (last visited November 28, 2017).

<sup>37</sup> See *infra* nn.47-53 and accompanying text.

<sup>38</sup> The International Center for Non-for-Profit Law, in its “Survey of Trends Affecting Civil Space 2015-2016,” noted five common constraints used by states to stifle NGO operations: (i) proposal and adoption of restrictive NGO laws, (ii) proposal and adoption of anti-protest laws, (iii) closure, de-registration and expulsion of NGOs, (iv) adoption and manipulation of counterterrorism laws, policies, and (v) adoption of laws and policies that restrict access to resources, notably including foreign funding and affiliations. Global Trends in NGO Law, volume 7, issue 4 (September 2016) at 10, available at <http://www.icnl.org/research/trends/> (last visited December 30, 2017).

<sup>39</sup> See *infra* nn.45-46 and accompanying text.

<sup>40</sup> Tunisia: Draft Law on the Repression of Offences against Armed Forces poses serious threat to freedom of expression, Article 19, May 12, 2015, available at <https://www.article19.org/resources.php/resource/37962/en/tunisia:-draft-law-on-the-repression-of-offences-against-armed-forces-poses-serious-threat-to-freedom-of-expression> (last visited on November 12, 2017).



operation could result in 10 years in prison for “revealing national security secrets.”<sup>41</sup>

Egypt. Egypt’s 2014 Constitution guarantees freedom of the press, prohibits censorship and bans prison terms for press “crimes.”<sup>42</sup> However, according to the Committee to Protect Journalists, Egypt was the third worst jailer of journalists in 2016 with 25 journalists behind bars.<sup>43</sup> In August 2015, the Egyptian President ratified an anti-terror law that stipulates exorbitant fines for

contradicting government data on militant attacks.<sup>44</sup>

Turkey. As of May 2017, Turkey had removed more than 4,000 judges and prosecutors, a quarter of the total, on suspicion of links to the 2016 failed coup.<sup>45</sup> Those who defy President Erdogan may suffer. When one court decided to release 21 journalists accused of Gulenist sympathies from pre-trial detention earlier this spring, three of its judges were suspended.<sup>46</sup>

China. The Constitution guarantees freedom of assembly and association.<sup>47</sup> Yet the 2016

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<sup>41</sup> Amna Guellali, *Draft Law Could Return Tunisia to a Police State*, Human Rights Watch, July 24, 2017, available at <https://www.hrw.org/news/2017/07/24/draft-law-could-return-tunisia-police-state> (last visited on November 12, 2017). “Denigrating the armed forces,” a vague term easily used to silence all criticism of the military, would also carry serious penalties. *Id.*

<sup>42</sup> Egypt Constitution Articles 70 and 71, available at <http://www.constitutionnet.org/vl/item/egypt-constitution-2014> (last visited November 24, 2017).

<sup>43</sup> Egypt Country Report 2017, Freedom House 2017, available at <https://freedomhouse.org/print/49430> (last visited November 12, 2017). Turkey was number one and China was number two as of December 1, 2016. Turkey’s crackdown propels number of journalists in jail worldwide to record high, Committee to Protect Journalists, December 13, 2016, available at <https://cpj.org/reports/2016/12/journalists-jailed-record-high-turkey-crackdown.php> (last visited May 2, 2018). Egypt was tied with China as the worst jailer of journalists in 2015 with 23 journalists in jail on December 1, 2015. See CPJ: China, Egypt Top List of Worst Jailers of Journalists In 2015, Radio Free Europe Radio Liberty, December 15, 2015, available at <https://www.rferl.org/a/cpj-worst-jailers-of-journalists-2015-rights/27428088.html> (last visited on May 2, 2018).

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<sup>44</sup> *Egypt imposes anti-terror law that punishes ‘false’ reporting of attacks*, The Guardian.com, August 17, 2015, available at

<https://www.theguardian.com/world/2015/aug/17/egyptian-president-ratifies-law-to-punish-false-reporting-of-terror-attacks> (last visited November 24, 2017). This law followed a July 1, 2015 terrorist attack in the Sinai which the media, *quoting security officials*, reported that dozens of troops had been killed. The military’s official death toll was 21 soldiers and scores of jihadists. *Id.*

<sup>45</sup> *Turkey has removed more than 4,000 judges, prosecutors after coup, minister says*, Reuters, May 26, 2017, available at <http://www.reuters.com/article/us-turkey-security/turkey-has-removed-more-than-4000-judges-prosecutors-after-coup-minister-says-idUSKBN18M0Q9> (last visited November 12, 2017). The vast majority of the judges, including two members of the constitutional court, are in prison. The President and the ruling party in Parliament now appoint judges. *Turkey’s purges are crippling its justice system*, The Economist, May 20, 2017, available at

<https://www.economist.com/news/europe/21722200-president-erdogans-drive-power-includes-putting-judges-under-his-thumb-turkeys-purges-are> (last visited November 12, 2017). See also *Turkey: The Judicial System in Peril – A Briefing Paper*, International Commission of Jurists (2016), available at <http://www.refworld.org/pdfid/57ee8e674.pdf> (last visited November 12, 2017).

<sup>46</sup> International Commission of Jurists, *supra* n.45.

<sup>47</sup> Constitution of the People’s Republic of China, Article 35, available at

Foreign NGO law says that “Foreign NGOs . . . must not endanger China’s national unity, security or ethnic unity” and must register with security agencies.<sup>48</sup> Critical terms, such as “endanger” and “national unity, security or ethnic unity,” are not defined in the law, which creates uncertainty and risk.<sup>49</sup> Accordingly, the ABA Rule of Law Initiative closed its Beijing office in 2016.<sup>50</sup>

Russia. The Constitution guarantees freedom of religion and association.<sup>51</sup> Nevertheless, a 2015 Russian law allows prosecutors, without a court order, to declare foreign and international organizations “undesirable” and shut them down.<sup>52</sup> Again,

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<https://www.usconstitution.net/china.html> (last visited November 25, 2017).

<sup>48</sup> 2016 PRC Law on the Management of Foreign Non-Governmental Organizations’ Activities Within Mainland China, Articles 5, 9, China Law Translate, April 28, 2016, available at <http://www.chinalawtranslate.com/2016-foreign-ngo-law/?lang=en> (last visited November 12, 2017).

<sup>49</sup> *Uncertainty Over New Chinese Law Rattles Foreign Nonprofits*, New York Times, December 29, 2016, available at

<https://www.nytimes.com/2016/12/29/world/asia/china-foreign-ngo.html> (last visited November 12, 2017).

<sup>50</sup> Debra Cassens Weiss, ABA initiative pulls out of Beijing amid uncertainty caused by law regulating foreign nonprofits, ABA Journal, January 3, 2017, available at

[http://www.abajournal.com/news/article/aba\\_initiative\\_pulls\\_out\\_of\\_china\\_amid\\_uncertainty\\_caused\\_by\\_law\\_regulating](http://www.abajournal.com/news/article/aba_initiative_pulls_out_of_china_amid_uncertainty_caused_by_law_regulating) (last visited November 12, 2017).

The office will remain closed until ROLI can gain formal approval for its work, due to the “heightened scrutiny of foreign organizations working in China and the uncertainties . . . of how the new law will be implemented.” *Id.*

<sup>51</sup> Russian Federation Constitution, Articles 28, 30 and 31, available at <http://www.constitution.ru/en/10003000-03.htm> (last visited November 25, 2017).

<sup>52</sup> “Khodorkovsky’s Otkrytaya Rossia NGO put on “undesirable organizations” list,” RAPS, Russian Legal Information Agency, April 27, 2017, available at

due to the risk created by ambiguity in the law, the ABA Rule of Law Initiative closed its Moscow office in 2016.<sup>53</sup> Additionally, based on the Yarovaya Law of 2016, Russia’s Supreme Court recently banned the Jehovah’s Witnesses as an “extremist” group, making them “legally” similar to such terrorist organizations as ISIS and Al Qaeda.<sup>54</sup>

### **Proposed ABA Virtual Grassroots Strategy for Building 21<sup>st</sup> Century Global Rule of Law**

#### Developing Country Legal Education, Bar Associations and Social Stratification

The constraints under which LPs are trained and work include legal education systems and professional legal communities often ill-suited to 21<sup>st</sup>-century global legal activity. However, thousands of LPs in the Middle East and elsewhere have been energized by their exposure to American legal thinking and to interactive training in legal skills, legal issues, and professional values. The majority of these LPs were hungry for far

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<http://www.rapsinews.com/news/20170427/278406293.html> (last visited November 12, 2017). *See also* Russian NGOs cynically treated like enemies of the state, Amnesty International, November 13, 2015, available at

<https://www.amnesty.org/en/latest/news/2015/11/russian-ngos-cynically-treated-like-enemies-of-the-state/> (last visited November 12, 2017). *See generally* Civic Freedom Monitor: Russia, The International Center for Not-for-Profit Law website (updated as of September 8, 2017) available at <http://www.icnl.org/research/monitor/russia.html> (last visited on November 12, 2017).

<sup>53</sup> ROLI email communication to the author dated April 20, 2017 (on file with the author).

<sup>54</sup> *Russia Bans Jehovah’s Witnesses, Calling It an Extremist Group*, N.Y. Times, April 20, 2017, available at

[https://www.nytimes.com/2017/04/20/world/europe/russia-bans-jehovahs-witnesses.html?\\_r=2](https://www.nytimes.com/2017/04/20/world/europe/russia-bans-jehovahs-witnesses.html?_r=2) (last visited on November 12, 2017).

more exposure than existing training resources allowed.

In the Middle East and in countries elsewhere around the world, many LPs are unemployed or their compensation is very low. For instance, as of May 2017, many entry-level LPs in Egypt were paid US\$ 500-1,000 per month.<sup>55</sup> Accordingly, most LPs cannot afford to pay ABA dues.<sup>56</sup>

Legal education in the Middle East and in many countries around the globe is provided through undergraduate programs. In many civil law countries, legal education is highly theoretical.<sup>57</sup> Many LPs graduate with relatively underdeveloped analytical and practical skills and little exposure to ethics and professional values or the value of the rule of law.

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<sup>55</sup> ROLI Egypt Judicial Training Program staff personal communication with the author. This is exacerbated in major cities like Cairo where the cost of living is very high, disposable income is low, and junior law professors must work a second job to support their families.

<sup>56</sup> The 2017-2018 dues for lawyers licensed as U.S. attorneys are tiered by bar admission date and by professional status (law students, judges, etc.). Annual dues generally range from \$120 to \$467 for attorneys admitted to the bar before 2017. Annual dues for lawyers licensed in a country other than the U.S. are \$181. On top of these basic ABA membership dues, there are typically additional dues to join Sections and/or Divisions of the ABA. ABA Membership Dues and Eligibility, available at [https://www.americanbar.org/membership/dues\\_eligibility.html](https://www.americanbar.org/membership/dues_eligibility.html) (last visited November 26, 2017).

<sup>57</sup> Some law schools may have introductory classes with 2,000 – 3,000 students in the lecture hall, limited libraries, little or no audio-visual equipment, and little online legal research or textbook availability in the Middle East. Internships and clinical experience are practically nonexistent. Further, there may be little or no homework or required reading. Some countries, like Egypt, have limited post-graduate training for judges and prosecutors.

Many national bar associations provide law graduates with few or even no opportunities for professional development through continuing legal education, bar conferences, or other support.<sup>58</sup> There is a limited sense of legal community as a whole and little interaction among LPs across all levels of the legal profession: judges, prosecutors, lawyers, law professors and law students.

In the Middle East and in many countries elsewhere around the world, society is very stratified. This leaves many LPs, such as women, religious and ethnic minorities and disabled and LGBT professionals, relatively isolated. Additionally, in-country training may not be widely available, affordable, or even safe. The virtual strategy proposed here transcends these limitations.

#### ABA's Spectacular Resources and Rule Of Law Leadership

The ABA encompasses 780 committees.<sup>59</sup> Committee email communications and

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<sup>58</sup> This is not to say that all bar associations in the Middle East and in the developing world are unproductive. *See generally* Nicholas Robinson and Catherine Lena Kelly, *Rule of Law Approaches to Countering Violent Extremism*, ABA ROLI Rule of Law Issue Paper, May 2017, at 9, n.28 (describing high-profile accomplishments of Tunisia and Pakistan bar associations), available at [https://www.americanbar.org/advocacy/rule\\_of\\_law.html](https://www.americanbar.org/advocacy/rule_of_law.html), (last visited November 26, 2017) [hereinafter *Countering Violent Extremism*].

<sup>59</sup> Additionally, the ABA has 3,500 entities, twenty-two Sections, six Divisions, six Forums, sixteen Commissions and nine Centers. They address legal matters ranging across the full spectrum of legal practice, from admiralty to zoning, judicial practice, mergers and intellectual property. *See generally* About the ABA, available at [http://www.americanbar.org/about\\_the\\_aba.html](http://www.americanbar.org/about_the_aba.html) (last visited on May 1, 2017).

regular conference calls drive much ABA activity.<sup>60</sup>

The ABA also has a proud history of impressive leadership in rule of law-building. An illustrative list of activities includes: (i) the International Visitors Program in the ABA Office of the President,<sup>61</sup> (ii) the ABA Groups “Work Around the Globe” webpage,<sup>62</sup> (iii) the ABA Around the World webpage,<sup>63</sup> (iv) the ABA Global Impact web page,<sup>64</sup> (v) the ABA Global Engagement Programs webpage,<sup>65</sup> and (vi) the International Legal Exchange Program.<sup>66</sup> Additionally, every year, ROLI

delivers rule of law training in-country to thousands of LPs in more than 50 countries.<sup>67</sup>

#### Grassroots Middle East and Global Rule of Law Capacity Building through Virtual Leverage of Existing Training Programs

For practical reasons, existing rule of law training programs accomplish valuable, but essentially one-time, engagements with LPs, many of whom are at senior levels. Imagine building regularized ongoing relationships and communication among LPs and ABA lawyers and thereby boosting worldwide rule of law capacity.

Extending participation in the ABA’s 780 committees to LPs around the world would enhance the ABA’s remarkable diversity of professional activity and committee membership, and its existing rule of law-development programs.<sup>68</sup> This virtual capacity-building strategy would offer long-term, continuous relationship-building and electronic interaction across the entire legal spectrum. Over time, an expanding pool of enthusiastic LP participants would dramatically increase the ABA’s rule of law-development impact and global presence.

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<sup>60</sup> These conference calls involve discussing committee business, such as webinar development, and presentations by expert speakers.

<sup>61</sup> International Visitors Program, available at [http://www.americanbar.org/groups/leadership/office\\_of\\_the\\_president/international\\_visitors\\_program.html](http://www.americanbar.org/groups/leadership/office_of_the_president/international_visitors_program.html) (last visited on May 3, 2017).

<sup>62</sup> See generally ABA Groups, available at [http://www.americanbar.org/groups/leadership/office\\_of\\_the\\_president/global-impact/aba-groups.html](http://www.americanbar.org/groups/leadership/office_of_the_president/global-impact/aba-groups.html) (last visited on November 23, 2017). This site lists 291 groups/web pages within 18 Sections, three Divisions, and six Centers, Commissions and initiatives (ranging from antitrust to taxation law).

<sup>63</sup> ABA Around the World, available at [http://www.americanbar.org/groups/leadership/office\\_of\\_the\\_president/global-impact/aba-around-the-world.html](http://www.americanbar.org/groups/leadership/office_of_the_president/global-impact/aba-around-the-world.html) (last visited on November 23, 2017). This webpage addresses issues ranging from a Chinese human rights lawyer to doing business in Cuba.

<sup>64</sup> ABA Global Impact, available at [http://www.americanbar.org/groups/leadership/office\\_of\\_the\\_president/global-impact.html](http://www.americanbar.org/groups/leadership/office_of_the_president/global-impact.html) (last visited on November 23, 2017).

<sup>65</sup> ABA’s Global Engagement Programs, available at [http://www.americanbar.org/groups/leadership/office\\_of\\_the\\_president/global-impact/aba-global-engagement.html](http://www.americanbar.org/groups/leadership/office_of_the_president/global-impact/aba-global-engagement.html) (last visited on November 23, 2017). This webpage links to additional ABA international activity website, including rule of law letters and global legal practice issues.

<sup>66</sup> International Legal Exchange Program (ILEX), available at [http://www.americanbar.org/groups/international\\_law](http://www.americanbar.org/groups/international_law)

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[/initiatives\\_awards/international\\_legal\\_exchange.html](http://www.americanbar.org/groups/international_law_exchange.html) (last visited on May 3, 2017).

<sup>67</sup> ABA Rule of Law Initiative, available at [http://www.americanbar.org/advocacy/rule\\_of\\_law.html](http://www.americanbar.org/advocacy/rule_of_law.html) (ROLI Programs Book pdf) (last visited on May 1, 2017).

<sup>68</sup> Whether an LP is a judge, has a legal practice, teaches or is female, disabled or LGBT, she or he could interact with likeminded ABA groups, or similar individuals, on a continuing basis. Whether through emails, conference calls or webinars, LPs’ participation in the ABA would dramatically enlarge their professional horizons and knowledge. It would enrich ABA committees and groups as well.



### How This Virtual Strategy Will Strengthen Middle East and Other LPs and Global Rule of Law

The positive impact of integrating the ABA's 780 committees with LPs is virtually unlimited. These committees are cauldrons of intellectual energy that enhance the development of its members and the law. They also strengthen professional identity and pride through a wider sense of professional community. At a deeper level, they embody American lawyers' visceral commitment to democratic values.

Committee members candidly analyze legal issues in their fields, solicit advice, debate arguments and organize legal education and training events, some of which are online.<sup>69</sup> LP participation in committees would encourage analytical reasoning, active debate and respectful disagreement, and would immerse LPs in the values of the global legal profession. It would also give LPs a front-row seat at cutting-edge devel-

opments in all fields of the law and legal practice.<sup>70</sup>

ABA committees also provide their members with a community that fosters support and friendship through mutual consultation and professional camaraderie.<sup>71</sup> Integrating LPs into the rich milieu of these diverse groups could reduce their isolation and engage them with lawyers from different backgrounds on a scale that may not be possible in their home countries.<sup>72</sup> Finally, their participation in these groups would strengthen their identity as legal professionals who are part of a global legal community devoted to rule of law.

### What This Proposal Will Cost and Its Similarity to Existing Specialized Pricing

The ABA's 400,000 members already interact digitally, primarily by email and the internet. Because the virtual strategy outlined in this article would build on the electronic core of the ABA system, *the incremental cost of electronically adding more participants is virtually zero*. Accordingly, this proposal should have

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<sup>69</sup> This is illustrated by excerpts from committee emails received by the author in 2017: (a) "Not sure I agree with the analysis here nor that the solutions proposed are understood very well . . . First [an Internet message can be tracked back to its source] . . . This is not true." Science and Technology, Information Security Committee email sent to author on Feb. 13, 2017 (on file with the author). (b) "A client of mine negotiated with an entity in Bahrain. She was told she needs an 'international money laundering clearance.' . . . Does anyone know about this?" Transnational Legal Practice Committee email sent to author on May 15, 2017 (on file with the author). (c) "My opinion is that privacy is dead . . . With current [corporate] privacy policies and legal theories in contracts/licensing and the ability to sell data between corporations, Google's ability to look at my search [etc.] . . . I have no practical way to protect myself." Science and Technology Committee email sent to author on Feb. 16, 2017 (on file with the author).

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<sup>70</sup> The value of this approach to strengthening global rule of law is highlighted at Countering Violent Extremism, *supra* n.59 at 10 ("Rule of law organizations can also help foster independent legal professions by sustaining the capacity, skills, and knowledge of practicing advocates through continuing legal education programs, mentorship networks, or legal awareness campaigns.").

<sup>71</sup> These committees are very diverse, comprising business lawyers, women, ethnic groups and LGBT legal professionals, and they serve judges, prosecutors, lawyers and law professors.

<sup>72</sup> The rule of law value of reducing the social and economic isolation of marginalized individuals is also highlighted, in a slightly different context, in Countering Violent Extremism, *supra* n.58 at 14 (social contract building).

essentially no impact on the ABA budget or the ABA's current sign-up system.<sup>73</sup>

This complimentary membership strategy is similar to existing specialized pricing policies for law students, young lawyers, solo lawyers, public interest/government and military lawyers, judges, and seniors.<sup>74</sup> These groups receive discounted (and, in some cases, free) membership. This reflects a policy objective of removing financial barriers to the involvement of these groups whose participation is deemed valuable but who would be unable to participate absent special dues arrangements. Complimentary memberships for LPs, whose economic circumstances are onerous, would similarly serve this important policy objective.

#### Implementation<sup>75</sup>

Under this proposal, the ABA would create a new membership category for LPs entering the ABA on a complimentary basis. One possible title could be Global Affiliates ("GAs"). GAs would qualify for complimentary ABA membership by completing one rule of law or legal training event sponsored by the ABA. This would ensure that GAs have initial exposure to the U.S. legal system. At the training site, GAs would receive a certificate with an electronic

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<sup>73</sup> The LP inclusion generated by this policy would not reduce existing revenue streams. These LPs are not, and would not be, ABA members absent the strategy proposed here. Additionally, wealthier LPs already members of the ABA would not likely cancel a paying membership to obtain a complimentary one.

<sup>74</sup> Membership Dues Discounts, available at [https://www.americanbar.org/membership/dues\\_eligibility/dues\\_discounts\\_payment\\_plans.html](https://www.americanbar.org/membership/dues_eligibility/dues_discounts_payment_plans.html) (last visited on November 25, 2017).

<sup>75</sup> This section identifies a number of practical steps for starting the LP complimentary membership program. It does not purport to be complete. Additional elements may be added later and adjustments could be made as needed.

code for use in the ABA's online sign-up system.<sup>76</sup>

### **ABA 21<sup>st</sup> Century Leadership in Fortifying Middle East and Global Rule of Law**

The ABA is the vanguard of global rule of law-development. No other organization can match its mix of leadership, expertise, diversity, and resources. With Middle East and global rule of law currently under assault and rule of law-development funding shrinking, the ABA's innovative leadership is needed now more than ever. The virtual strategy proposed here would expand existing interventions for building the capacity of global rule of law at the grassroots level. In this era of increasing attacks on rule of law, now is the time for ABA members to lead the world in using digital strategies to strengthen LPs in the Middle East and across the planet, fortify 21<sup>st</sup>-century global rule of law and expand the ABA's global membership and presence.

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<sup>76</sup> The ABA cost to generate computer code to add this category to the sign-up system should be relatively low.

*with Egyptian judges, prosecutors, lawyer and law professors. Previously, Mr. Brelsford served as the Deputy General Counsel at a NASDAQ-traded global telecommunications software company where he negotiated complex technology-transfer licenses on-the-ground worldwide.*

*He has JD and MPA degrees and was also a partner in the law firm Burke, Bauermeister and Brelsford, PLLC. Mr. Brelsford can be reached at*

*[gbrelsford@ruleoflawglobalassociates.com](mailto:gbrelsford@ruleoflawglobalassociates.com).*

### **MEC and ABA ROLI MENA Meet in Amman**

On February 18, 2018, Maha Shomali, Deputy Director for the Middle East and North Africa Division of the ABA Rule of Law Initiative (ROLI), and Jennifer Ismat, Co-Chair of the Middle East Committee (MEC) under the ABA Section of International Law, met to discuss possible areas for cooperation between ROLI and the MEC. Some ideas included sharing networks to identify expertise in specific law topics, exchanging information and updates about the two organizations' work, and encouraging membership in the MEC. Both ROLI and MEC look forward to collaborating in the future.

*Maha Shomali (left) and Jennifer Ismat (right) in front of the ABA ROLI office in Amman, Jordan*





# Cultural Heritage and Sustainable Development Goals: The Challenges to the Middle East in Uncertain Times of Conflicts and Displacements An Overview

Michela Cocchi

## Introduction

Meaningful events are unfolding within Middle-Eastern Cultural Heritage and Landscape area. The third edition of the Rome MED–Mediterranean Dialogues<sup>1</sup> took place from 30 November to 2 December 2017, acknowledging the Mediterranean region as a unique melting pot of cultures and religions, with important historical legacies, and a rich natural and cultural heritage. The preparatory process towards the adoption of a Global Compact for Safe, Orderly and Regular Migration (GCM), mandated in Annex II of the UNGA71 New York Declaration for Refugees and Migrants<sup>2</sup>, marked the beginning of Phase II with the preparatory stocktaking meeting on 4-6 December in Puerto Vallarta. On 4 December, the Supreme Court of the United States (SCOTUS) heard oral arguments in *Rubin v. Iran*<sup>3</sup>, with justices

considering the application of the Foreign Sovereign Immunities Act (FSIA) to antiquities owned by a foreign sovereign in the United States – specifically, the scope of the terrorism exception for attaching otherwise immune assets for the execution of a civil judgment under Section §1610(g) of the FSIA. On 6 December, the President of the United States recognized Jerusalem as Israel’s capital and announced his intention to relocate the United States Embassy to Israel from Tel Aviv to Jerusalem.<sup>4</sup> On 8 December, the Louvre Abu Dhabi tweeted that it will display the *Salvator Mundi* by Leonardo Da Vinci<sup>5</sup> acquired by the Department of Culture and Tourism - Abu Dhabi.<sup>6</sup> On 11 December, Saudi Arabia announced that, as part of its Vision 2030 Blueprint, it is allowing movie theatres to open for the first time in more than 35 years.<sup>7</sup> From 11-12 December, the Second UNWTO/UNESCO World Conference on

<sup>1</sup> The MED – Mediterranean Dialogues are the annual high-level initiative promoted by the Italian Ministry of Foreign Affairs and International Cooperation and ISPI (Italian Institute for International Political Studies) in Rome. The event aims at drafting a *positive agenda* for the Mediterranean, building upon four pillars, Shared Prosperity, Shared Security, Migration, and Civil Society and Culture. About the initiative, see <https://rome-med.org/>.

<sup>2</sup> [http://www.un.org/en/ga/search/view\\_doc.asp?symbol=A/RES/71/1](http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/71/1).

<sup>3</sup> On 21 February 2018, the U.S. Supreme Court issued its decision in *Rubin v. Iran*, ruling unanimously in favor of Iran. Specifically, the Supreme Court ruled that “Section 1610(g) of the FSIA of 1976 does not provide a freestanding basis for parties holding a judgment under Section

1605(A) to attach and execute against the property of a foreign state.” *Rubin v. Iran*, available at [https://www.supremecourt.gov/opinions/17pdf/16-534\\_6jfm.pdf](https://www.supremecourt.gov/opinions/17pdf/16-534_6jfm.pdf); see also Scotusblog, available at <http://www.scotusblog.com/case-files/cases/rubin-v-islamic-republic-of-iran-2/>.

<sup>4</sup> <https://www.whitehouse.gov/the-press-office/2017/12/06/presidential-proclamation-recognizing-jerusalem-capital-state-israel-and>.

<sup>5</sup> The painting was sold last November at Christie’s for \$450.3 million, shattering the high for any auctioned work of art. “Quotation of the Day: Art World Gasps as a Leonardo With Flaws Tops \$450 Million,” *New York Times* (15 Nov. 2017), available at <https://nyti.ms/2hEY1nE>.

<sup>6</sup> <https://twitter.com/louvreabudhabi>.

<sup>7</sup> <http://vision2030.gov.sa/en>.

Tourism and Culture<sup>8</sup> was held in Muscat, Sultanate of Oman, to enhance the role of Tourism and Culture sectors in the UN's 2030 Agenda for Sustainable Development<sup>9</sup>, addressing a wide range of topics, including governance models, tourism development and protection of cultural heritage, culture and tourism in urban development and creativity, and exploring cultural landscape in tourism as a vehicle for sustainable development in destinations worldwide.<sup>10</sup>

Cultural heritage, identities, conflicts, and forced displacement are central to events unfolding in the Middle East and embedded in our world today. "We are meeting at a time of immense challenges. (...) There are rising inequalities within and among countries. There are enormous disparities of opportunity, wealth and power. (...) Global health threats, more frequent and intense natural disasters, spiralling conflict, violent extremism, terrorism and related humanitarian crises and forced displacement of people threaten to reverse much of the development progress made in recent decades. Natural resource depletion and adverse impacts of environmental degradation, including desertification, drought, land degradation, freshwater scarcity and loss of biodiversity, add to and exacerbate the list of challenges which humanity faces. (...) It is also, however, a time of immense opportunity. Significant progress has been

made in meeting many development challenges."<sup>11</sup>

## Cultural Heritage Within Sustainable Development Agenda

On 1 January 2016, the UN 17 Sustainable Development Goals (SDGs)<sup>12</sup>, adopted by all 193 Member States on 25 September 2015, officially came into force. The SDGs are unique in calling for action by all countries – poor, rich and middle-income – to promote prosperity while protecting the planet. SDGs recognize that ending poverty must go hand-in-hand with strategies that build economic growth and address a range of social needs including education, health, social protection, and job opportunities while tackling climate change and environmental protection.

While the SDGs are not legally binding, governments are expected to take ownership and establish national frameworks for the achievement of the Goals. Goal 11 explicitly mentions cultural heritage, referring to making cities and communities "inclusive, safe, resilient and sustainable," *inter alia* through more "efforts to protect and safeguard the world's cultural and natural heritage" (Target 11.4).

Since the 17 SDGs are conceived as an indivisible whole, depending on each other – as the provision of Target 17.14 relating to "policy coherence" shows – the linkages between cultural heritage and sustainable development have taken center stage within the development sector. Culture and its diverse manifestations – from historic monuments and museums to traditional

<sup>8</sup><http://tourismandculture.cvent.com/events/second-unwto-unesco-world-conference-on-tourism-and-culture/event-summary-b425fc30c73643a7b2d4ea6d54b7755a.aspx>.

<sup>9</sup><http://www.un.org/sustainabledevelopment/development-agenda/>.

<sup>10</sup> The Conference was concluded with the "Muscat Declaration on Tourism and Culture: Fostering Sustainable Development" signed by representatives of UNESCO, the UN World Tourism Organization (UNWTO), delegations, private sector, local communities and NGOs: <https://custom.cvent.com/E5C28A0D212A415D9AD3C8B699EBC072/files/6c58f2e914dd4fd3a75086698923f713.pdf>.

<sup>11</sup> Excerpt from Resolution adopted by the UN General Assembly on 25 September 2015 "Transforming our World: the 2030 Agenda for Sustainable Development": [http://www.un.org/ga/search/view\\_doc.asp?symbol=A/RES/70/1&Lang=E](http://www.un.org/ga/search/view_doc.asp?symbol=A/RES/70/1&Lang=E).

<sup>12</sup> <http://www.un.org/sustainabledevelopment/sustainable-development-goals/>.

practices and contemporary art forms – have the power to transform societies. Heritage constitutes a source of identity and cohesion for communities disrupted by today’s major phenomena such as climate change, globalization, the world financial crisis, growing inequalities and globally increasing urban populations. Creativity contributes to building open, inclusive and pluralistic societies. Both heritage and creativity lay the foundations for vibrant, innovative and prosperous knowledge societies.<sup>13</sup>

*Law for Creativity* (L4C) is the project established in the fall of 2011 and developed by Michela Cocchi Studio Legale and the Lady Lawyer Foundation.<sup>14</sup> L4C focuses on the role that local heritage - determining cultural heritage - plays in the sustainable development framework and aims to conduct a comparative study of legal systems across different countries, identifying the sets of rules which channel investment, innovation and competitiveness policies to foster creativity. One of the first outcomes of this study is that many of the elements essential to creativity are not captured by traditional indicators. Responding to the UN’s call for a more “holistic approach to development” (UN Resolution 65/309),<sup>15</sup> *Law for Creativity* has sought to develop new tools taking into account both the particular nature and structure of creative clusters, which tend to form organically on the basis of collaborative ties, and the international dimension of cultural and creative sector policies. In operational terms, the research, which has been based on four pillars, three key-concepts, and ten case studies<sup>16</sup>, has highlighted the purpose

of “Building bridges through culture and building protection through law.”<sup>17</sup>

UN Educational, Scientific and Cultural Organization (UNESCO) international treaties<sup>18</sup> endeavour to protect and safeguard the world’s cultural and natural heritage, including ancient archaeological sites, intangible and underwater heritage, museum collections, oral traditions and other forms of heritage, and to support

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- Human Rights;  
- Labour;  
- Environment; and  
- Anti-Corruption,  
in line with UN Global Compact (UNGC) pillars (<https://www.unglobalcompact.org/>).

The three key concepts are:

- Freedom, responsibility, accountability;
- Beyond commutative and distributive justice, adding solidarity as a sense of responsibility on the part of everyone with regard to everyone; and
- In the present global economy, establishing Rule of Law from regulation to re-regulation through de-regulation.

The ten case studies are: Italy; EU; USA; Japan; South America; Eurasia; Asia; Middle East; Far East; and Africa.

<sup>17</sup> OECD (2017), *Policy Coherence for Sustainable Development 2017: Eradicating Poverty and Promoting Prosperity*, 159, OECD Publishing, Paris. See [http://www.keepeek.com/Digital-Asset-Management/oecd/development/policy-coherence-for-sustainable-development-2017\\_9789264272576-en#page187](http://www.keepeek.com/Digital-Asset-Management/oecd/development/policy-coherence-for-sustainable-development-2017_9789264272576-en#page187).

<sup>18</sup> Specifically, the Convention on the Protection and Promotion of the Diversity of Cultural Expressions (2005); the Convention for the Safeguarding of the Intangible Cultural Heritage (2003); the Universal Declaration on Cultural Diversity (2001); the Convention on the Protection of the Underwater Cultural Heritage (2001); the Convention for the Protection of the World Cultural and Natural Heritage (1972); the Convention on the Protection of Copyright and Neighbouring Rights (1952, 1971); the Convention on the Means of Prohibiting and Preventing the Illicit Traffic of Cultural Property (1970); the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict (1954). For the texts of the UNESCO Conventions, see [http://portal.unesco.org/en/ev.php-URL\\_ID=12024&URL\\_DO=DO\\_TOPIC&URL\\_SECTION=201.html](http://portal.unesco.org/en/ev.php-URL_ID=12024&URL_DO=DO_TOPIC&URL_SECTION=201.html).

<sup>13</sup> <https://en.unesco.org/themes/protecting-our-heritage-and-fostering-creativity>.

<sup>14</sup>

<https://www.unglobalcompact.org/participation/report/cop/create-and-submit/detail/336281>.

<sup>15</sup> <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N11/420/70/PDF/N1142070.pdf?OpenElement>.

<sup>16</sup> The four pillars are:

creativity, innovation and the emergence of dynamic cultural sectors.<sup>19</sup>

UN Resolution 70/214 on “Culture and Sustainable Development”<sup>20</sup> – adopted by the General Assembly at its 70th Session, on 22 December 2015 – reaffirms the role of culture as an enabler of sustainable development, encouraging all Member States and other relevant stakeholders to raise awareness on the importance of culture in sustainable development and to ensure its integration into development policies.<sup>21</sup> The Resolution was developed on the basis that policies responsive to cultural contexts can yield better, sustainable, inclusive and equitable development outcomes, and that both the economic and social dimensions of poverty can be addressed through cultural heritage and the cultural and creative industries.

For the Middle East, on the one hand, there is an increasing awareness and discussion of sustainable development; but, on the other hand, cultural heritage seems to be at risk more than ever. Wars and waves of terrorism are destroying and endangering people and cultural treasures, as in Syria, Iraq, and Jordan. At the same time, the course of so-called everyday development – either through large-scale projects such as mines or dams, or the cumulative impact of industrial expansion and smaller-scale projects such as housing and tourism developments – vastly damages cultural landscapes. Urban growth and projects of urban modernization are going on, constituting potential threats to cultural heritage, which could increase due to the refugee crisis. Innovative approaches are thus needed.

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<sup>19</sup> For the list of Member States of UNESCO, see <https://en.unesco.org/countries/member-states>.

<sup>20</sup> Built on the four previous Resolutions 65/166, 66/208, 68/223 and 69/230.

<sup>21</sup> [http://www.un.org/en/ga/search/view\\_doc.asp?symbol=A/RES/70/214](http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/70/214).

## Cultural Assets in the Middle East

The Middle East is a leading origin of culture in the world, honoured by UNESCO which lists several sites as the heritage of all peoples. In addition to numerous archaeological sites, the continuously evolving landscapes are testimonies to this outstanding urban tradition. The cultural heritage endowments of the region are classified under three categories: 1) archaeological and historical sites, monuments, and collections; 2) urban and rural ensembles such as the built medinas and kasbahs; and 3) living cultural heritage (folk-life and folklore, traditional arts and crafts, and related elements).

The region represents a geographically vast mosaic of several distinct past civilizations, which can be traced through history to more than 11,000 years ago, encompassing not only a plurality of nations but also an even greater number of ethnic and culturally diverse groups.

Judaism, Christianity, and Islam, the three major monotheistic world religions, had their birthplaces in MENA and remain an essential part of the region’s and all humanity’s heritage.

According to the World Bank report, “Cultural Heritage and Development: A Framework for Action in the Middle East and North Africa”<sup>22</sup>, MENA’s cultural riches are still underrepresented and it is impossible now to accurately quantify the sheer magnitude of the patrimony in the region. Discoveries continue to enrich the known heritage. The wealth of the underwater cultural heritage has only recently begun to be uncovered, as

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<sup>22</sup> Cultural Heritage and Development: A Framework for Action in the Middle East and North Africa. World Bank, 2001: <https://openknowledge.worldbank.org/bitstream/handle/10986/13908/225590REPLACEMENT1ccession0A2003100110.pdf?sequence=1&isAllowed=y>.



underwater archaeological research has just started. Throughout the Middle East, there is also an enduring and rich oral cultural heritage, complementing the written and the built heritages. Traditional music, popular crafts, folklore, oral histories, dances, storytelling, customs, and ways of life—all are unique instances of living culture and are an intrinsic part of the region's cultural heritage.

The wealth of the cultural heritage endowments of the Middle East is both a testament to the importance of the region's contributions to humanity's history and an enormous capacity to support and inspire the development of the region's countries into the future. Many countries in the MENA have a huge untapped source of human talent.

Protection of Middle East cultural heritage involves four main international guidelines:

- the protection of monuments and artifacts in time of armed conflict;
- the prevention and suppression of illicit traffic in antiquities and cultural objects including efforts to safeguard the integrity of cultural heritage beyond the territorial boundaries of any State, as in the case of underwater cultural heritage;
- the evolution of the notion of cultural property moving from the material idea of cultural property, as material objects, to the human dimension of heritage, and the consequent idea of intangible cultural heritage affecting areas such as international trade, foreign investment, environmental protection, and human rights; and
- the protection of cultural diversity closely linked to the global economy and the revolution in information and communication technology, which has increased the opportunities for cultural

interaction between peoples but, at the same time, has spurred an intense interest in native and local culture and traditions as an antidote to the alienating effects of globalization.

### **Cultural Heritage in Times of Conflict and Displacement**

Cultural heritage has increasingly become the direct target of systematic and deliberate attacks in conflicts throughout the Middle East. Out of 81 World Heritage properties in the Arab states region, 21 are listed as in danger, 17 due to conflict. In countries such as Iraq and Syria, extremist groups are implementing a deliberate strategy aimed at eradicating cultural diversity. This involves the persecution of peoples and groups on the basis of their cultural and religious identity, including intentionally targeting their material cultural references – such as shrines, monuments, sites, museums and their artifacts, libraries and archives, but also schools and other places of knowledge, and even teachers, intellectuals and religious leaders. The strategy also includes preventing people from practicing their intangible cultural heritage, including religious rituals, and from exercising their cultural rights.

The evolving nature of contemporary conflicts, from inter to intra-state, poses a significant challenge to the current world order built on international treaties and decision-making. Armed non-state actors are increasingly challenging domestic governance and often do not consider themselves bound by decisions taken at the international level. These conflicts increasingly affect culture and challenge the way in which organizations like UNESCO, whose programmes are built around international conventions signed by states, can respond.<sup>23</sup>

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<sup>23</sup>See Francesco Bandarin, *Protecting Cultural Heritage in Conflicts Areas* (3rd edition, Rome,



After the 2014 UN call to stop what then UNESCO Director General Irina Bokova termed an “emerging *cultural cleansing*”,<sup>24</sup> the year 2015 marked a turning point in the international community’s attitude toward cultural heritage. In February of that year, with the backing of UNESCO, the UN Security Council adopted Resolution 2199,<sup>25</sup> condemning the destruction of cultural heritage in Iraq and Syria particularly by ISIL and ANF<sup>26</sup>, whether such destruction is incidental or deliberate, including targeted destruction of religious sites and objects. A month later, in Baghdad, Iraq, Irina Bokova, convinced of the effectiveness of soft power, launched Unite4Heritage,<sup>27</sup> a global campaign on social media, uniting young people in the celebration and safeguarding of cultural heritage around the world. On 1 September 2015, the United Nations Institute for Training and Research (UNITAR) published satellite photos<sup>28</sup> showing that ISIS jihadists had destroyed the Temple of Bel in Palmyra<sup>29</sup>. Soon after, Italy proposed the idea of creating the “Blue Helmets for Culture” to the UN General Assembly. In February 2016, Italy signed an agreement with UNESCO to create the world’s first emergency task force for culture<sup>30</sup>, composed of civilian experts and the Italian Carabinieri.

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2017); MED-Mediterranean Dialogues “Looking Ahead: Charting New Paths for the Mediterranean” Report, 132, (2017), downloadable from [http://www.ispionline.it/sites/default/files/media/img/rapporto\\_med\\_ispi\\_2017.pdf](http://www.ispionline.it/sites/default/files/media/img/rapporto_med_ispi_2017.pdf).

<sup>24</sup> <http://www.un.org/apps/news/story.asp?NewsID=48454#.WjevTLTbwTg>.

<sup>25</sup> [https://undocs.org/S/RES/2199\(2015\)](https://undocs.org/S/RES/2199(2015)).

<sup>26</sup> Islamic State in Iraq and the Levant (ISIL, also known as Daesh), Al-Nusra Front (ANF).

<sup>27</sup> <http://www.unite4heritage.org/>.

<sup>28</sup> <https://www.unitar.org/unosat-confirms-destruction-palmyra-temples-syria>.

<sup>29</sup> <http://whc.unesco.org/en/list/23/>.

<sup>30</sup> <http://whc.unesco.org/en/news/1436/>.

The United Arab Emirates and France have since held an international conference on protecting cultural heritage in times of armed conflict, under the auspices of UNESCO, with the participation of over forty countries. At the close of the conference, the Abu Dhabi Declaration<sup>31</sup> was adopted, reaffirming the “common determination to safeguard the endangered cultural heritage of all peoples, against its destruction and illicit trafficking.” The key concept of the Declaration is that “heritage, in all its diversity, is a source of collective wealth that encourages dialogue” and “its destruction is a threat to peace,” “in line with the international conventions of The Hague of 1899, 1907, 1954, and the latter 1954 and 1999 Protocols.”<sup>32</sup>

The new approach<sup>33</sup> to the protection of culture for peace and security was confirmed by the unanimous adoption of Resolution 2347 by the UN Security Council on 24 March 2017<sup>34</sup>, including the creation of an international fund and the organization of a network of safe havens for endangered cultural property covering the full range of threats to cultural heritage, without any geographical limitations and regardless of whether the perpetrators of the crimes are terrorist

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<sup>31</sup> <https://www.icomos.org/en/what-we-do/image-what-we-do/401-heritage-at-risk/8262-icomos-adopts-the-abu-dhabi-declaration-on-heritage-at-risk-in-the-context-of-armed-conflicts>.

<sup>32</sup> For an excursus of the process of the idea of immunity for cultural property in times of war within the international community see <https://en.unesco.org/courier/2017-october-december/historic-resolution-protect-cultural-heritage>.

<sup>33</sup> According to the strategy to address the destruction of cultural heritage, *The Prosecutor v. Ahmad Al Faqi Al Mahdi*, before the International Criminal Court (ICC-01/12-01/15), marks the first time that war crimes based on the destruction of cultural heritage have been the main charge in an international criminal case. For the case information sheet see <https://www.icc-cpi.int/mali/al-mahdi/Documents/al-mahdiEng.pdf>.

<sup>34</sup> <https://www.un.org/press/en/2017/sc12764.doc.htm>.

groups already on UN lists or members of other armed groups.

As substantial progress is made, other challenges emerge, specifically related to the forced displacement of people and the renewed risk of nuclear weapons. Conflicts no longer have clear endings, creating complex humanitarian emergencies of a protracted nature, leaving large parts of the population displaced, and requiring a prolonged engagement on the part of the international community with regards to both the delivery of basic humanitarian assistance and protection responsibilities, including the safeguarding of cultural rights.

The forced displacement of people uproots cultural heritage and decontextualizes it. Forced to flee their homelands, people try to hold on to their sense of self and belonging. On the routes of exile, cultural heritage can be a source of resilience, but can also provoke misunderstandings between people. Displacement also generates new forms of cultural heritage, give rise to fusions of various kinds, and generate narratives of displacement that can become formative collective myths. Refugee camps are established with the intention of being demolished: they are meant to have no history and no future.

Renewed risk assessments for nuclear weapons and policies are being undertaken around the world. However, the effect on cultural heritage is being neglected. Risks associated with the use of nuclear weapons in the Middle East highlight some specific dangers in the region. The impact of nuclear weapons on important cultural artifacts, and preventing catastrophic damage to them, should be integral to cultural heritage protection in every country and the subject of informed public debate.<sup>35</sup>

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<sup>35</sup> This point is underscored in the Chatham House October 2017 Research Paper “Nuclear Disarmament and the Protection of Cultural

## **Fighting Illicit Trafficking in Cultural Property**

Both Resolution 2199 (2015) and Resolution 2347 (2017) call for appropriate steps to prevent trade in Iraqi and Syrian cultural property and other items of archaeological, historical, cultural, rare scientific, and religious importance. The resolutions emphasize the links between the trafficking of cultural property and the financing of terrorist groups, and between terrorism and organized crime. Italy, Jordan, the International Criminal Police Organization (INTERPOL), UNESCO, and the UN Office on Drugs and Crime (UNODC) drew up a list of suggested key actions based on the general principles listed below:

- the protection of cultural heritage is a fundamental tool to support the development of peaceful societies, strengthen sustainable development, prevent violent extremism, and suppress terrorist financing;
- international legal instruments and operational tools already provide a meaningful framework that should be fully implemented by Member States and all relevant stakeholders;
- shared responsibility, including the harmonization of domestic legislation and international cooperation in investigations and legal procedures, is critical;
- greater collaboration between the public and the private spheres is needed;
- a one-size-fits-all response will not work in the short term; and

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Heritage,” authored by Sasan Aghlani, Patricia Lewis, and Beyza Unal.  
<https://www.chathamhouse.org/publication/nuclear-disarmament-and-protection-cultural-heritage#>.

- all Member States should prioritize their commitment to address the growing ties between terrorist and criminal organizations.<sup>36</sup>

There is heightened concern today over the unprecedented scale of organized looting and trafficking of cultural property – especially in the context of crises in the Middle East. On 13 July 2017, just days after the Hamburg G20 called on countries to tackle terrorist financing, including the looting and smuggling of antiquities, the EU Commission put forward rules to clamp down on the illegal importation and trafficking of cultural goods from outside the EU.<sup>37</sup> Currently, the EU applies prohibitions on goods from Iraq and Syria, but there is no general EU framework governing the importation of cultural goods.

The “Proposal for a Regulation of the European Parliament and the Council on the Import of Cultural Goods” has been submitted to the EU Parliament and Council and is expected to apply from 1 January 2019, demonstrating the EU Commission’s commitment to protecting global heritage, which will be showcased during the 2018 European Year of Cultural Heritage.<sup>38</sup>

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Looting and trafficking of cultural property, destroying cultural sites, eradicating cultural diversity, and the consequent loss of irreplaceable cultural heritage have led to heinous violations of

human rights and fundamental freedoms.<sup>39</sup> Galvanizing the international community into action has never been more urgent.

<sup>36</sup>[http://www.italyun.esteri.it/rappresentanza\\_onu/resource/doc/2016/09/protect.pdf](http://www.italyun.esteri.it/rappresentanza_onu/resource/doc/2016/09/protect.pdf).

<sup>37</sup>[http://europa.eu/rapid/press-release\\_IP-17-1932\\_en.htm](http://europa.eu/rapid/press-release_IP-17-1932_en.htm).

<sup>38</sup>[http://europa.eu/rapid/press-release\\_IP-17-1111\\_en.htm](http://europa.eu/rapid/press-release_IP-17-1111_en.htm); see also Legislative Train Schedule, available at <http://www.europarl.europa.eu/legislative-train/theme-a-balanced-and-progressive-trade-policy-to-harness-globalisation/file-import-of-cultural-goods>.

<sup>39</sup>See “Protecting Cultural Heritage: An Imperative for Humanity Acting Together Against Destruction and Trafficking of Cultural Property by Terrorist and Organized Crime Groups”, INTERPOL (2016).

## Long Awaited Electoral Reform Finally to be Implemented in Lebanon

Kelly Blount

The Prime Minister of Lebanon, Mr. Saad Hariri, was recently in the news after tendering a controversial resignation from his home in Saudi Arabia just eleven months into his current tenure, shortly before then rescinding the resignation in Lebanon.<sup>1</sup> Mr. Hariri's attempted resignation has raised many questions regarding the internal dysfunction of Lebanon's government,<sup>2</sup> Hezbollah's presence in the Middle East, and Mr. Hariri's ability to lead. However, perhaps of greatest concern is the critical role that Lebanese politics plays as the canary in the mine shaft – signaling changes in the dynamic between the regional powerhouses, Saudi Arabia and Iran. Not reported in conjunction with Mr. Hariri's temporary abdication of office is the ongoing struggle for electoral reform in Lebanon. Previously, the Lebanese Parliament had ratified a highly anticipated electoral law which will go into effect in the coming year. The combined timing of the two events is particularly significant, highlighting the importance of the new law's potential success in the year ahead.

### Lebanon's Coalition Government

Lebanon has long been a critical component of stability in the Middle East. Weighing in at just over four thousand square miles, the Lebanese Republic sits strategically in both the geography and politics of the Middle East. In 1990, the Levantine country's lengthy civil war was finally concluded, establishing the framework for the political system in place today. However, despite the relative "newness" of the Lebanese government, the structure of its coalition government remains largely unchanged since the 1940s.<sup>3</sup> The Lebanese Parliament is comprised of fifty percent Muslims and fifty percent Christians, a system generally referred to as "confessionalism."<sup>4</sup> Furthermore, this breakdown is determined through a majoritarian system traditionally stemming from small voting districts.<sup>5</sup> Though the original intent of this system was to spread political power among groups,

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<sup>1</sup> Ben Hubbard and Hwaida Saad, "Saad Hariri Steps Back from Resignation in Lebanon," *New York Times* (Nov. 22, 2017), available at <https://www.nytimes.com/2017/11/22/world/middleeast/lebanon-saad-hariri-resignation.html>

<sup>2</sup> "Who is Lebanon's Saad Hariri?", *Al Jazeera* (4 Nov. 2017), available at <https://www.aljazeera.com/news/2017/11/saad-hariri-171104133707456.html>

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<sup>3</sup> Elias Muhanna, "Is Lebanon's New Electoral System A Path Out of Sectarianism?", *The New Yorker* (June 29, 2017), available at <https://www.newyorker.com/news/news-desk/is-lebanons-new-electoral-system-a-path-out-of-sectarianism>

<sup>4</sup> Imad Harb, "Lebanon's Confessionalism: Problems and Prospects," *United States Institute of Peace* (March 30, 2006), available at <https://www.usip.org/publications/2006/03/lebanons-confessionalism-problems-and-prospects>

<sup>5</sup> "The Adwan Electoral Law: From Bad To Worse?", *Moulahazat – A Lebanese Political Blog*, available at <https://moulahazat.com/2017/06/18/the-adwan-electoral-law-from-bad-to-worse/>

the actual effect of the system has been to allow political parties to solidify voting blocs along political and religious lines. This consolidation of power has made the issue of electoral reform an ongoing headache in Lebanon.

According to electoral law, the president and prime minister are chosen following the election of parliament, within the stipulation that the president must be a Maronite Christian and the prime minister must be Sunni Muslim. The president is elected by the new parliament and then he or she appoints the prime minister. The stakes are high in such a divided environment and the nature of the coalition government leaves open enormous room for either party to hijack or force a favored agenda.

### Moving Forward with Reform

Lebanon has not held a parliamentary election since 2009, given the cancellation of the 2013 elections. In order to avoid the government grinding to a halt, the issue of electoral reform was once again pushed to the forefront of the parliament's agenda. On June 16, 2017, the parliament finally ratified an election reform law and will enjoy an eleven month extension in office as the country prepares for the new system to go into effect<sup>6</sup>. The first vote under the new system is scheduled for May 2018, and observers are optimistic that the change will help to nurture the coexistence of a population that is divided into eighteen religious sects dispersed into numerous political parties.<sup>7</sup> With the new law,

elections will switch to a proportional, representative system, which some think may enable less entrenched figures to ascend into parliament.<sup>8</sup> The law also provides for voting rights for qualifying Lebanese expatriates at Lebanese embassies and reserves seats in parliament for expatriate citizens.<sup>9</sup>

However, many critics opine that this law will not go far enough so as to restructure a system that is often blamed for intensifying and politicizing religious distinctions.<sup>10</sup> Others claim that the re-division of voting districts even further exacerbates sectarian divides and will fail to achieve the proportionality that civil society groups have been demanding.<sup>11</sup> Still, the political gridlock that has continued to plague Lebanese politics seems to be at least minimally assuaged by the promise of this reform law. While tensions between regional powers play out on the Lebanese ballot, it will be a notable year to watch the political foray that will ultimately decide the future of the Lebanese people.

**Update:** Since this article was written, parliamentary elections have taken place on May 6, 2018 in Lebanon. Hezbollah and allies won more than half the seats.<sup>12</sup>

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<sup>6</sup> David Schenker, "A New Electoral Law for Lebanon: Continuity or Change?", The Washington Institute (June 6, 2017), available at <http://www.washingtoninstitute.org/policy-analysis/view/a-new-electoral-law-for-lebanon-continuity-or-change>

<sup>7</sup> AFP, "Lebanon agrees new election law, sets vote for 2018," Yahoo (June 14, 2017), available at

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<https://www.yahoo.com/news/lebanon-agrees-election-law-sets-vote-2018-143600821.html>

<sup>8</sup> See note 3.

<sup>9</sup> See note 5.

<sup>10</sup> See note 3.

<sup>11</sup> See note 5.

<sup>12</sup> DW, "Hezbollah and allies set for majority in Lebanon Elections," Deutsche Welle (May 7, 2018), available at <http://www.dw.com/en/hezbollah-and-allies-set-for-majority-in-lebanon-elections/a-43678104>